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MACKENZIE VALLEY PIPELINE INQUIRY

Government
Publications

IN THE MATTER OF APPLICATIONS BY EACH OF

(a) CANADIAN ARCTIC GAS PIPELINE LIMITED FOR A
RIGHT-OF-WAY THAT MIGHT BE GRANTED ACROSS
CROWN LANDS WITHIN THE YUKON TERRITORY AND
THE NORTHWEST TERRITORIES, and

(b) FOOTHILLS PIPE LINES LTD. FOR A RIGHT-OF-WAY
THAT MIGHT BE GRANTED ACROSS CROWN LANDS
WITHIN THE NORTHWEST TERRITORIES

FOR THE PURPOSE OF A PROPOSED MACKENZIE VALLEY PIPELINE

and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND
ECONOMIC IMPACT REGIONALLY OF THE CONSTRUCTION,
OPERATION AND SUBSEQUENT ABANDONMENT OF THE ABOVE
PROPOSED PIPELINE

(Before the Honourable Mr. Justice Berger, Commissioner)

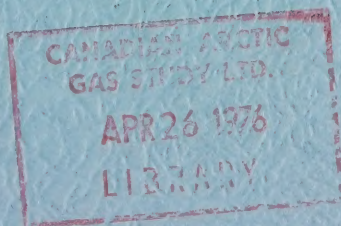
Yellowknife, N.W.T.

April 14, 1976.

PROCEEDINGS AT INQUIRY

Volume 143

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M835
Vol. 143



APPEARANCES:

Mr. Ian G. Scott, Q.C.,
Mr. Stephen T. Goudge,
Mr. Alick Ryder and
Mr. Ian Roland for Mackenzie Valley Pipeline
Inquiry;

Mr. Pierre Genest, Q.C.,
Mr. Jack Marshall,
Mr. Darryl Carter and
Mr. J.T. Steeves for Canadian Arctic Gas Pipeline
Limited.

Mr. Reginald Gibbs, Q.C.,
Mr. Alan Hollingworth and
Mr. John W. Lutes for Foothills Pipe Lines Ltd.;

Mr. Russell Anthony,
Prof. Alastair Lucas and
Mr. Garth Evans for Canadian Arctic Resources
Committee;

Mr. Glen W. Bell and
Mr. Gerry Sutton for Northwest Territories
Indian Brotherhood, and
Metis Association of the
Northwest Territories;

Mr. John Bayly and
Miss Leslie Lane for Inuit Tapirisat of Canada,
and The Committee for
Original Peoples Entitle-
ment;

Mr. Ron Veale and
Mr. Allen Lueck for The Council for the Yukon
Indians;

Mr. Carson Templeton for Environment Protection
Board;

Mr. David H. Searle, Q.C. for Northwest Territories
Chamber of Commerce

Mr. Murray Sigler for The Association of Munici-
palities;

Mr. John Ballem, Q.C. for Producer Companies;

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Yellowknife, N.W.T.

April 14, 1976.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

CLARE BARRYMORE VIRTUE,
ARTHUR RAYMOND GIROUX
RICHARD J. BEHN, resumed:

CROSS-EXAMINATION BY MR. SCOTT (CONTINUED):

Q Mr. Virtue, before I come back to the matter of training people for construction that we were beginning to talk about at the end of yesterday I'd like to fill in a number of other matters before that. First of all, you told us yesterday there was a waiting list of about 400 persons who had been already partly, if not completely screened. I wonder if you can tell us how many of those northerners are white, as opposed to native, bearing in mind it's not always easy to be precise?

WITNESS VIRTUE: I wonder if I could ask Mr. Giroux to answer that?

Q Any question that should be referred to somebody else, you'll just pass it on for me, will you?

WITNESS GIROUX: I believe about 80% would be native, and when I say "native" I mean Inuit, Metis or Indian.

Q And has that been the proportion right along throughout the program?

A I believe so, yes.

Q Now, what proportion of the 109 who are still within the program are native

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Cross-Exam by Scott

1 as opposed to white?

2 A I believe about 90%.

3 Q Well now, could you
4 provide for us a list of where these 400 applicants
5 come from in the Northwest Territories?

6 A Yes sir, we could.

7 Q Yes. How many of them,
8 ~~when~~ they were applying to you, --

9 MR. HOLLINGWORTH: Excuse me,
10 Mr. Scott, do you want each person listed by name
11 and then their geographic origin, or do you want the
12 number of persons from different locals throughout the
13 Territories, or do you just want the towns from which
14 applicants have come, listed?

15 MR. SCOTT: I prefer the first,
16 but if the first is not available I'd be content with
17 the second or the third possibility.

18 Q When these persons applied
19 and were screened, and we're now talking about the
20 109 and 400, how many of them were already employed?

21 A I would say that probably
22 very few, if any, were employed on a permanent basis.

23 Q Well, let's not talk about
24 employment on a permanent basis, because I've been led
25 to believe that there are many persons in the north,
26 particularly persons of native origin, who don't wish
27 to be employed on a permanent basis, and what I'm
28 interested in, is how many of these people would have
29 been regularly employed for substantial portions of the
30 year -- six months or so?

Behn, Giroux, Virtue
Cross-Exam by Scott

1 A I don't really know but
2 I'd have to guess probably maybe 20%, a very low per-
3 centage, in my estimation. I think if I had the time
4 to go over this list I could probably be more accurate
5 in that regard.

6 Q What were the other 80%
7 doing?

8 A Well, the majority of them
9 were in their settlements, probably not doing much of
10 anything. You can go into Fort Providence, I'm sure,
11 for example any day of the week and you'd find eight or
12 ten or 12 young people there that really aren't doing
13 anything. They're waiting for the opportunity to get a
14 part-time job with Hire North or whatever happens to
15 come along. But you can go into any of these settle-
16 ments at any time and you'll find that situation.

17 Q I noted on your list of
18 criteria for selection yesterday that one of them made
19 reference to stability, and I heard it said that one
20 of the ways to judge that stability was the extent to
21 which the persons had been previously regularly employed
22 for parts of the year. Is that so?

23 A Certainly, if we have
24 two individuals with equal qualifications and one has
25 a work history and background, not even necessarily
26 related to the industry, that person would probably
27 get more consideration.

28 Q Well, would it be fair
29 to say then that these successful applicants, that is
30 the 400 who are waiting, represent a substantial

Behn, Giroux, Virtue
Cross-Exam by Scott

1 component of the stable work force of these communities?

2 A Yes, I would suggest that
3 that's probably correct.

4 Q Yes, and has Nortran
5 done any studies to measure the effect of removing
6 from a community a proportion of its stable youthful
7 work force?

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Behn, Giroux, Virtue
Cross-Exam by Scott

1 A No sir.

2 Q No. Have you given any
3 consideration to doing that, bearing in mind that there
4 are trade-offs that have to be made in bringing persons
5 into the petroleum industry as against leaving them in
6 their communities or towns where they will take up
7 the ordinary work of those towns and communities?

8 WITNESS VIRTUE: I wonder if
9 I could attempt to answer that. Our information suggests
10 that there's probably five or six hundred unemployed
11 employables, I think is the kind of terminology Canada
12 Manpower might use, in the Mackenzie corridor, and we
13 believe that these people can be offered opportunities
14 in the petroleum industry without harming in any way the
15 sort of essential industries in the smaller communities.

16 Q Yes. Are you talking there
17 Mr. Virtue about native people or white people when you
18 say 600?

19 A I'm talking about the --
20 all of the people.

21 Q I see and what is your
22 source for that information?

23 A We -- I was looking at --
24 referring to 14-F, the Canadian Arctic Gas' Northerner
25 Training Program and was alluded to by Mr. Bell, yesterday,
26 I believe, some information that was given to them by
27 the Department of Indian and Northern Affairs.

28 Q Well, I'm not criticizing
29 you for **relying** on Mr. Bell as a source of information,
30 though I would not be sure that I would do it for myself

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Cross-Exam by Scott

1 in every case, but what is the source of your information
2 when it comes to putting forward this figure?

3 A Well sir, on page 19 of
4 Section 14-F of Canadian Arctic Gas's application some
5 information was provided by the Department of Indian
6 Affairs and Northern Development and it says that:

7 "The average unemployed employables is 520",
8 is the figure that they name. Our own experience and
9 talking to people in the N.W.T. Employment Division of
10 Canada Manpower would lead us to believe that this is a
11 reasonable figure.

12 Q Did you give any considera-
13 tion to the appropriateness of the definition of
14 unemployed that the Department of Indian Affairs and
15 Northern Development or Manpower have utilized in
16 assessing the available manpower in the Northwest
17 Territories?

18 A No, I haven't.

19 Q No. Well now, I notice
20 that in your program there are some women who are
21 employed in clerical positions -- the clerical training
22 positions.

23 A Yes sir.

24 Q Yes. Have you given
25 any consideration to offering employment to women in
26 non-clerical positions, bearing in mind the experience
27 in Alaska?

28 A Yes, we have.

29 Q What is the -- is Nortran's
30 policy on that subject?

Behn, Giroux, Virtue
Cross-Exam by Scott

1 A To encourage our
2 sponsor companies to offer positions to women in the
3 technical and in fields other than the clerical accounting.

4 Q That, I take it, is a
5 recommendation that you have made to your sponsor
6 companies?

7 A That's correct.

8 Q Yes, and your ability to
9 take trainees is dependent on their cooperation in
10 making the slots available, isn't it?

11 A That's correct.

12 Q Yes, and I take it that
13 though there's hope for the future perhaps, nothing
14 has come of that yet?

15 A That's right.

16 Q Yes. There are no women
17 in any such positions in the training program at present?

18 A In which positions, Mr.
19 Scott?

20 Q In non-clerical positions.

21 A I think there's one young
22 lady who's in a marketing department and I don't think
23 I'd classify that as clerical, so there's one that's
24 in a non-clerical position.

25 Q But apart from clerical
26 and marketing, there are no women in technical positions
27 having to do with operations of the project?

28 WITNESS GIROUX: That's correct.

29 Q Yes. But I take it you
30 see no reason of principle why they should not be

Behn, Giroux, Virtue
Cross-Exam by Scott

1 included for this kind of occupation?

2 WITNESS VIRTUE: In principle,
3 that's correct.

4 Q Yes. Well now, one
5 thing that rather troubles me, 106 are in the program --
6 I'm sorry 109. There are 400 on the waiting list
7 and we were told yesterday about the positions that will
8 be available. I have some difficulty understanding why
9 Nortran continues to go out and take applications for
10 its program.

11 A Well, part of it's an
12 information process, Mr. Scott. We feel that the more
13 information that the people have about jobs and
14 opportunities and careers in the petroleum industry, that
15 the more informed kind of choice they might make, and
16 so part of it's just straight information given. As we
17 noted, we visit the high schools and we don't offer jobs
18 or positions. What we do is talk about careers and
19 educational requirements that are required if you want
20 to aspire to such and such a job in the petroleum
21 industry.

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Behn, Giroux, Virtue
Cross-Exam by Scott

1 Q Mr. Virtue, the thing that
2 troubles me is that that program continues to go on, this
3 educational program, visiting high schools in communities,
4 interesting people in the program of Nortran. That's
5 what you're doing, isn't it?

6 A Well, I hope it's
7 interesting people in careers in the petroleum industry.
8 The petroleum industry is much broader than Nortran.

9 Q I understand that, but
10 you have no capacity at the moment to absorb even the
11 400 on your waiting list.

MR. GIROUX:

12 A I don't think that that's
13 entirely correct that we're going into the communities
14 trying to interest people in Nortran. Initially we
15 did. We had a substantial number of positions but very
16 few applicants when the program started; but the situa-
17 tion we're in now is that every week we receive three
18 or four applications, new applications. Really what
19 we're doing now is going into the communities to inter-
20 view these new applications -- new applicants, pardon
21 me.

22 Q All right. Well what
23 I'm getting at, is with 400 applicants already screened
24 on the waiting list, why don't you just issue an
25 announcement that the program is full, and more than full,
26 and is not taking any more applications?

27 A Well, the program is
28 very seldom ever full, we do have some attrition and
29 we occasionally get new positions. So it's never full,
30 we're always looking for somebody. We recruit on an

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Cross-Exam by Scott

ongoing basis as openings occur.

Q Well, look, there are 109 in the program and 116 slots in the program. There are 400 already screened on the waiting list. Now I put it to you that it would be reasonable and practical to postpone your recruitment program, tell people it's closed off, at least for a year or so, so that there would be no misunderstanding about what is at stake here.

A Yes. I think you've got to realize that the 400 applicants, out of 400 applicants not all of them qualify for the program, at this point in time, because of educational standards, this type of thing.

Q Well, you told us yesterday that the 400, all of them or almost all of them had been screened.

A That's correct.

Q So I take it that meant to say that they were on their face eligible for the program, if there was a slot for them.

A That's not necessarily true; because they're screened doesn't mean to say they're eligible. These are the total applicants, 400 people that have applied. A number of these people are not qualified. We've recommended to a large number of them that they return to school for educational upgrading.

Q Well then, how many are screened and on the waiting list?

Behn, Giroux, Virtue
Cross-Exam by Scott

1 A I would say that probably
2 we have an eligibility list we could look at today that
3 has perhaps 20 or 25 names.

4 Q Well then, what do you
5 mean when you say that you have 400 on the waiting list?

6 A Well, I think that per-
7 haps when I say that we have 25 or 30, these 25 or 30
8 would be at the higher levels in terms of educational
9 standards.

10 Q Well then, just one
11 moment, Mr. Virtue. Can I take it then that of all
12 the persons who have applied because of your require-
13 ments, there are now only 25 or 30 who could enter the
14 program?

15 A No, I didn't say that.
16 I said we had 25 or 30 on an active eligibility list
17 right now that we can draw from. Now if we had 25 or
18 30 jobs today, and selected those 25 or 30 people on
19 the eligibility list, we would form another eligibility
20 list that was perhaps going to people with lower
21 educational standards but still meeting the requirements
22 of the criteria for the program.

23 Q Well, I'm not sure that
24 I understand, but perhaps I can sum it up by asking you
25 one question: Has it occurred to any of you that a
26 program of this type being run in fairly high gear in
27 the Northwest Territories involves a representation
28 to the people of the Territories about future employment
29 in the petroleum industry?

MR. HOLLINGWORTH: What's the

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Cross-Exam by Scott

representation?

MR. SCOTT: A holding out of
employment possibilities, to people who seek employment.

WITNESS VIRTUE:

A Yes sir, that's the
intent of the program, to offer opportunities for
training and employment in the petroleum industry.

Q But bearing in mind the
state of the program, the requirements for entry to it,
the waiting list, whether it be large or small, do you
think it's entirely candid at this stage to suggest
that the program can even begin to meet the aspirations
of the people as you've described?

WITNESS GIROUX:

A I guess at this point
in time the answer would be "No."

Q Let me just emphasize
what troubles me. It is said in many places in the
Northwest Territories that the pipeline and the gas
plants will offer extensive employment in career
positions to northerners, and that's being said, of
course every time you go to a school or go to a public
meeting, every time you read the evidence you read
yesterday, and what troubles me is is that today a
realistic scenario, leaving aside 100 jobs?

THE COMMISSIONER: Excuse me,
I don't quite follow that, Mr. Scott. Leaving aside
the 100 jobs for which they have already prepared
people?

MR. SCOTT: No, for which there
are on the two gas pipelines openings.

THE COMMISSIONER: Well, I

Behn, Giroux, Virtue
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1 thought if they did build, say, the Arctic Gas Pipeline,
2 there would be about 250 permanent jobs connected
3 with operating and maintenance of that pipeline.

4 MR. SCOTT: And Mr. Virtue said
5 yesterday, sir, that of those they had -- they were
6 training something like 90, I think he said -- 80 or 90.

7 WITNESS VIRTUE: I think the
8 question was, though, how many positions are we training
9 towards?

10 MR. SCOTT: Yes.

11 A We're looking at the
12 technical trade positions and there are about 80 or
13 90 of those kinds of positions. The northerners will
14 also be able to aspire to other kinds of positions.

15 Q Well, I understand --
16 let's leave aspiration aside, anybody can aspire to
17 take Mr. Horte's place, but what you're doing is you're
18 training 80 or 90 job types --

19 A Right.

20 Q --80 or 90 job positions,
21 on either one of the gas pipelines.

22 A That's true.

23 Q Well, what I am really
24 asking is in view of that, in view of the numbers of
25 people in your program, in view of the waiting list
26 whether it be long or short, is it entirely -- would it
27 be misunderstood if the people of the Northwest
28 Territories thought that this program offered any
29 opportunities beyond that to them?

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MR. HOLLINGWORTH: I think
your question can be misunderstood Mr. Scott because
it was clearly stated yesterday that training is also
ongoing for jobs that would be available in three gas
plants. Each of them would employ about 60 people.

MR. SCOTT: Yes.

MR. HOLLINGWORTH: Well, in
all fairness, shouldn't that be included in your --

MR. SCOTT: Well, I withdraw
the question and perhaps you can just help me by
commenting on this; bearing in mind the number of jobs
we're talking about, the qualifications for entry, the
waiting list, your ability to train for positions; why
is it now necessary to go around and extensively
advertise and promote this program?

WITNESS BEHN: From those
400 people, all the people that aren't selected for
a training position, Art writes a letter to them and
apologizes for not being able to accommodate them at any
particular given time, so it isn't a waiting list as
such. It's a list of names that we have of people who've
applied. We have the information that we need to make
some sort of wise decision whether a guy's married,
single, what he's interested in. He's not waiting
for a job. He's not sitting in some office waiting to
be called -- sitting in a Manpower^{office} waiting to be called
to go to a job. I mean, they're encouraged to go out and
look for other kind of work or upgrading or whatever.

WITNESS GIROUX: I guess Mr.
Scott, we're rather optimistic that at some point in time

Behn, Giroux, Virtue
Cross-Exam by Scott

1 there will be development in the north. We also
2 recognize that for many of these jobs, it's a long
3 process to train. I think if you accept the fact that
4 someday there'll be development in the north, I think
5 you have to accept the fact that, particularly young
6 people in high schools should be giving some consideration
7 towards training in the petroleum industry if they're
8 so inclined. They should be provided with that informa-
9 tion and be put in a position to make their own decision
10 based on whatever information we can provide.

11 I just can't see the line of
12 questioning; the number of applications we're getting
13 for a program and the limited number of jobs we have,
14 I can't see that that would be any different for any --
15 let's forget about northerners for a minute and just
16 look at any company in the south. I'm sure that Alberta
17 Gas Trunk Line has many, many outstanding applications
18 from individuals that would like to go to work for that
19 company, and I can't see that this is any different.

20 Q Well, I'm sure it's not
21 at all different and that's precisely the point I'm
22 making, except for one factor; that it seems to me that
23 inherent in an aggressive program of recruitment, is the
24 suggestion that these jobs will be available to those
25 people. I'm troubled that that may not be entirely
26 accurate, bearing in mind the skill requirements and your
27 ability to train them.

28 A I just thought -- I think
29 I mentioned earlier that we really aren't on an
30 aggressive program of recruitment, but certainly we can't

Behn, Giroux, Virtue
Cross-Exam by Scott

turn down applications. They've got to be considered and I think anybody that applies deserves an interview and more information on the program.

THE COMMISSIONER: Well, let me see if I understand what is under discussion here. The assumption is, in Mr. Scott's question, and of course in your own planning; the assumption is that, let us say the Arctic Gas pipeline will be built and Imperial, Shell and Gulf will build their gas plants in the delta. You've got 250 jobs on the pipeline, 180 jobs in the gas plants. The producers made it clear to us, when we held hearings in Inuvik that an awful lot of those jobs at the gas plants would have to be manned by experienced people from the industry in the south; perhaps some of them, for all I know, from the Nortran Program; although the impression I received was that there are a great many jobs connected with the running of the gas plants that require a lot of experience, and it would be unrealistic to suggest that native northerners could be recruited even from the Nortran Program to undertake those positions.

So Mr. Scott appears to be saying, as I understand it, "look, maybe if this Arctic Gas thing goes ahead and the three gas plants, maybe the best you can do for the northerners is to place the 109 that you're already training, and maybe you really won't be able to place any more than that in the kind of career opportunities in petroleum and gas that you're outlining to people in schools and at meetings in the Mackenzie Valley."

Now, it's early in the morning,

Behn, Giroux, Virtue
Cross-Exam by Scott

but that's my impression of where we're at at this point. Is that fair enough Mr. Scott?

MR. SCOTT: That's entirely fair, and I would have thought that if that was correct, you would then say, "Well we'll play down this program. We're not going to advertise and go out and interview people anymore, because we would be making a promise we can't keep."

A Well, I think that's a good point of view Mr. Scott. I think that I would rather do it the other way; that if we only had, through attritions say, ten additional positions become available, that we should make it known that there are those ten positions available and we select the people who we feel are best qualified to benefit from that kind of opportunity and you can't do that. You don't reach those people unless you're talking about training and employment opportunities in the petroleum industry.

Q Mr. Virtue, have you had any discussion with your principals as to whether you should keep on recruiting and advertising for the program in view of these facts?

WITNESS VIRTUE: No.

Q Have they given you any direction on this subject?

A No sir, we haven't discussed this matter recently.

Q Well, on another subject, I'd like to read you a -- just for your comments, a statement that was made by a witness at a community

Behn, Giroux, Virtue
Cross-Exam by Scott

1 hearing, I think at Hay River. It begins at page 438
2 of the transcript and I think I can read it. There are
3 some things to leave out, but I think I can read it
4 fairly as a -- it's a statement of a Mr. Fraser who was
5 a member of Nortran at one point and he says:

6 "Well, I've talked to quite a few trainees that have
7 worked there and have been down there for a while
8 and it seems like they go down there and after maybe
9 three months, they start learning and then after
10 three months, it doesn't seem like there's no job
11 left. You're just following a guy around and you're
12 not really learning anything and you lose interest,
13 and I think that's why a lot of guys are quitting
14 because it seems like there's nothing to carry on.
15 They don't give you a position. They say 'you're
16 a northern trainee' so they're scared to give you a
17 position. You're just an extra man on shift work
18 down there."

19 Then further on:

20 "Well, I was -- well, like I was down in the training
21 program for over a year and a half and it seemed
22 like after the first three months, things just went
23 downhill and it seemed like there was nothing left.
24 There was no progress getting made. They send you
25 out to school, but still there's four guys on a
26 shift and I was the fifth ^{man} on shift and some guys
27 would start working there and you know, you'd have
28 to start showing them what to do and everything, but
29 they're still making \$1.20 an hour more than you.

30 Like, they had a list on the wall of different

Behn, Giroux, Virtue
Cross-Exam by Scott

positions and wage scales and they had northern
trainee and northern trainee regular, and it didn't
seem after your northern trainee regular, it didn't
seem like there was anywhere to go unless you quit
and went to work for somebody else, because once
you're a northern trainee regular, that's the highest
your wage scale went."

Now, I wonder if any of you
would have any comment on that observation about the
program?

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1 WITNESS GIROUX: I'd like to
2 make one or two, and I'd like to start out by saying
3 that Ned Fraser came back to the program with the same
4 company for a start. I'd also like to say that this
5 program isn't without problems, and we do put trainees
6 in training sites from time to time where problems that
7 he has described are, in part, true. That is where ade-
8 quate training isn't taking place and through monitoring
9 the training at a particular site, it becomes evident,
10 and action in every case has been taken to straighten
11 it out. That situation does not exist at the plant
12 he's referring to. I'd also like to add that Ned Fraser
13 from the time that he was out, for the first period of
14 time that he was out, came into the program with a
15 very minimal education. He was put on a mathematic
16 correspondence course, he went from that course to
17 SAIT on full pay for 12 weeks, got his fourth class
18 steam engineer ticket, and left the program. I mentioned
19 he returned to the program with the same company.

20 I'm not suggesting there
21 weren't difficulties at that plant. If there weren't
22 difficulties in any of these plants we probably wouldn't
23 need a program. So there were problems.

24 Q Well, I'm glad to hear
25 that. I sense that the difficulty that Mr. Fraser
26 was referring to, is that when you come into the program
27 your classification is "trainee" and that as far as he
28 could see, you remained a trainee almost indefinitely,
29 and were never assigned a permanent position in one
30 of the companies, and that if you wanted a permanent, that

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Cross-Exam by Scott

1 is a non-trainee trainee position, you weren't going to
2 get it in one of the sponsoring companies because you
3 had to quit and get it somewhere else. Now, is there
4 anything in that criticism?

5 A It's partly true. The
6 fact that they are trainees for the entire time
7 they're on the program, the reason we make that distinc-
8 tion and call them "a northern trainee" is because they
9 do get certain benefits that we've described earlier,
10 so they have to be differentiated from the regular
11 staff. For that reason they're tagged with that "trainee"
12 for the want of no other better terminology.

13 Q I'm sure Mr. Fraser
14 wouldn't object to getting the benefits, which are
15 necessary for him if he's living out of the Territories;
16 but when does a man in the training program get a
17 permanent position?

18 A The day he starts.
19 I say, not necessarily a permanent position, but he's
20 a regular member of that staff -- of that group, that
21 plant. Each company handles the situation a bit
22 differently. Some companies from day 1, the trainee
23 -- we refer to him as a trainee -- goes into a regular
24 position with that company. I believe in the case of
25 Gulf, the supernumerary for, I don't know, a certain
26 period of time, I believe it's a six months.

27 WITNESS VIRTUE: They are the
28 extra man on the shift for a period of time.

29 Q So do I understand
30 that as soon as the man is accepted as a trainee by

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Cross-Exam by Scott

1 one of the sponsoring companies, he has a permanent
2 job like any other employee of that company?

WITNESS GIROUX:

3 A That's correct.

4 Q Well now, Mr. Virtue,
5 in this pamphlet that you've made an exhibit,
6 "The Task", which I gather is circulated to trainees,
7 you told the trainees in your opening letter that you'd
8 be coming down there, or coming up to the Berger
9 Inquiry, and that you were going to tell the Inquiry
10 as best you can how Nortran operates and what we think
11 is good about the program, and some of the things that
12 we believe are not so good about it, and you invited
13 the readers to let you know what things were not so
14 good about it. Now in an effort not to be critical
15 because nothing is perfect, but in an effort to see how
16 the program can be improved, what are the things that
17 are not so good about it, to which you've referred?

WITNESS VIRTUE:

18 A Well, I'd just like to
19 comment first that we didn't have any response to my
20 request to the readers, so I don't know whether this
21 indicates satisfaction on their part or not.

22 THE COMMISSIONER: It indicates
23 that they're not in the habit of writing letters.

24 A That's probably more true,
25 sir.

26 MR. SCOTT: To managers anyway.

27 Q I'm sorry, Mr. Virtue,
28 I interrupted you.

29 A I think one of the problems
associated with training at this point in time is the

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1 problem of trying to provide the opportunities for the
2 technicians and tradesmen to acquire these skills without
3 disrupting or without causing antagonism amongst the
4 workers who are already employed by that company.

5 If the northern trainee would commit to the fact that
6 he was only there as a trainee and that at some point
7 in time he would leave, there would be not too much
8 problem with this. But the fact is he has the option to
9 stay there, so when we take Mr. Fraser and send him to
10 school for 12 weeks so that he gets his fourth class
11 power engineering certificate, that doesn't happen to
12 the other workers from the south who look on him as a
13 competitor at that plant. This causes us some problems,
14 and that's one area. Now, Art, Mr. Giroux, you were
15 going to talk about accommodation.

16 WITNESS GIROUX: Yes. This
17 hasn't been mentioned but I guess one of the biggest
18 problems that we have is in the accommodations area.
19 We supply fully furnished accommodations which could
20 be either trailers, apartments or houses, whatever is
21 available, and it's just ludicrous the number of man
22 hours that are spent trying to find accommodations.
23 You're probably aware of the tight accommodation
24 situation in the south today, and as well we run into
25 a lot of discrimination. The type of thing "I like
26 Indians, but there's no way I'll rent a house to them."

27 This is very common all
28 through the areas that we work in. We have people coming
29 out at the end of the first week in May, coming into
30 Edmonton and Calgary and we still haven't located

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1 accommodation for them and we've been working on it
2 now for six weeks. I say this is a major problem Nortran
3 has, and I think it probably has some bearing on the
4 number of people you can accommodate in the south for
5 training positions. That's a problem and a serious
6 one.

7 WITNESS BEHN: Some of the
8 things I run into, I travel to the training sites and
9 see these guys at least once a month, a lot of times
10 three or four times a month, and I run into situations
11 where trainees have concerns. I was a trainee for
12 2½ years. I had concerns. Art will certainly tell you
13 about that. There is always somebody with something
14 on his mind trying to get himself ahead or seeing
15 some injustice or what he thinks is an injustice that's
16 happening to him. In the case of Ned Fraser I was in-
17 volved with Ned and -- when he quit the program and I
18 am not calling Ned a liar; I would say that half of
19 the reason that he wanted to quit or the reason that he
20 did quit would be attributed to the fact that he
21 wanted to come back north, I don't know why, maybe just
22 to check it out to see if it was the same or he thought
23 he could make more money. When those guys are in a
24 training situation, for him to learn all the necessary
25 precautions and being aware of all the situations that
26 might develop in a gas plant, he has to follow a guy
27 around for two and three years to make sure that for--
28 the guy that's working with him to make sure that he
29 knows what he's doing. A lot of times a guy won't do
30 anything until something breaks down or something

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1 abnormal develops in the progress of operations. So
2 it could be that he follows a guy around for 18 months
3 and not do anything; but if he's not doing anything, if
4 he says he's not learning anything then he shouldn't be
5 there because he should be learning, because I walked
6 around behind a guy for six months too and after three
7 weeks I thought I could do the job. But when the time
8 came for me to do something when a serious problem
9 developed I was the first one to the phone to find out
10 what was going on. So I would say that what Ned has
11 to say is true in that he did follow somebody around,
12 but for him to be in a situation where he's not learning
13 I would certainly refute that kind of a statement.
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1 Q Well Mr. Virtue, was there
2 anything else that you contemplated in this phrase when
3 you said that you'd tell us the things that were not so
4 good about the program?

5 WITNESS VIRTUE: No sir.

6 Q That was the list?

7 A That's all I can think of
8 just at the moment. My intention was to describe the
9 program as best I could and to tell the good things as
10 well as the bad things about it.

11 Q Well, now let me deal with
12 two matters related to the existing program. The first
13 is entry standards and you told us what the entry
14 standards were yesterday. Have any studies been done
15 to verify the appropriateness of these entry standards,
16 and I'm thinking particularly of the educational
17 standards?

18 A I don't think a study, Mr.
19 Scott. The fact is, the entry standards are lower than
20 what the companies would usually require of a southern
21 recruit, and it was just largely a matter of judgement of--
22 that the person could cope with the job and the position
23 at this level of education and we would have the
24 opportunity to build on the knowledge he already had and
25 get him up to this other level.

26 Q What I'm really getting at
27 Mr. Virtue, is the educational standards are a normal
28 requirement for employment in the south and obviously
29 a normal requirement at your sponsor companies. What
30 concerns me is whether that educational standard, even

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1 though lowered as it has been done, is appropriate in
2 developing a northern employment program. Isn't there
3 some other standard that might be devised that didn't
4 have reference to grades completed that would be more
5 meaningful, such as functional literacy or a testing
6 scheme that was designed to test perceptions and general
7 knowledge and command of language?

8 A Yes. Well, we do test
9 people Mr. Scott. At the orientation, we test all the
10 people; the T.A.B.E. test; test of adult basic education which
11 gives us a pretty good idea of where the person is
12 functioning at in arithmetic knowledge, reading compre-
13 hension and basic literacy areas. We also, when we
14 enroll people in the apprenticeship programs, have them
15 challenge the -- an entry exam into the apprenticeship
16 program. So again, that gives us another standard to
17 go by and we -- as I said, by using some judgement and
18 some experience, set our levels so that these people
19 by and large would be able to challenge and pass that
20 apprenticeship entry examination.

21 Q No, but what I'm getting
22 at is, in a northern training program, isn't there some
23 virtue in abandoning the educational standard; that is,
24 grade X completed and trying to substitute some other
25 and more meaningful standard?

26 A I think that's a concept
27 sir but a more meaningful standard is
28 something I'd have some difficulty with because my
29 knowledge of the kinds of trades and technical jobs in
the industry do require that people can manipulate

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1 mathematical equations; that they do require that they
2 understand certain physical principles and so on.

3 Q Yes, but they don't get
4 those up to grade six. What troubles me you see, is
5 I know some people, native and white people, who
6 have very low educational standards for reasons that
7 have nothing to do with intelligence or ability to
8 absorb information or knowledge that have rather to do
9 with geography and opportunity and if you set grade six
10 completed or grade eight completed, you screen out those
11 people and there have been other techniques devised
12 such as functional literacy tests and other kinds of
13 general knowledge tests and I wonder why those tests
14 haven't been considered in order to open up this program
15 as widely as you can. Is it because of the sponsors
16 or is it because you have no confidence in any such tests,
17 or haven't had time to look at them?

18 WITNESS GIROUX: I think one
19 thing you have to consider is that probably this type
20 of questioning should be placed before the apprentice-
21 ship board. They're the people that set the regulations.

22 Q Well, we'll come to
23 apprenticeship in a moment, because it's a little
24 different. I'm talking about the other jobs where
25 apprenticeship, to meet provincial standards isn't
26 required.

WITNESS VIRTUE: The other jobs
such as --

Q You gave a list yesterday
of the educational requirements.

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1 A Yes, I did.

2 Q And they, I take it
3 applied across the board?

4 A They had different
5 requirements, Mr. Scott for different kind of jobs.

6 Q Well, there are only
7 17 people in the apprenticeship program. Have I got
8 that right according to your list?

9 WITNESS GIROUX: That is
10 probably right, but there are a large number that will
11 be going into apprenticeship programs.

12 Q Put dealing with the
13 others, why is it that -- does it make any sense that
14 they should have to meet an educational standard; a
15 formal education standard if there is some other kind
16 of test that can be devised for them?

17 A Well, there are northerners
18 in some of our positions today that certainly don't have
19 the minimum educational standards that we've set out.
20 They're in trades where we feel they're not in a losing
21 situation. They're the type of people you're talking
22 about that have indicated they have some of the skills.
23 Certainly they have the intelligence to go into those
24 types of trades. We don't at any time want to put some-
25 body into a losing situation. The educational levels
26 have already been dropped substantially from the
27 standards that are set for southerners. I mean how
28 far do you go?

29 Q Well, I'd abandon them
altogether, but that's not your affair. Let me put it

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Cross-Exam by Scott

1 this way. Do I have it correctly that apart from the
2 apprenticeship program, you do not have an educational
3 qualification?

4 WITNESS VIRTUE: The educational
5 qualifications are the criteria for selecting the
6 trainees or what I read to you yesterday Mr. Scott.

7 Q So that apart from the
8 apprenticeship program, you do have an educational
9 qualification?

10 A Yes.

11 Q All right. Now, what
12 I'm saying is, have you given any consideration to
13 dropping that educational qualification in favor of
14 some other method of testing?

15 A I don't know of any other
16 good measuring device so I haven't given that considera-
17 tion.

18 Q Well, you're aware of
19 functional literacy tests, aren't you?

20 A Yes.

21 Q What else would you want
to know about an employee apart from that, that you would
know by virtue of the fact that he completed grade six?

A Well, I would know for
one thing Mr. Scott that if he completed grade eight
or grade nine, that he had some introduction to
algebra and that we could build on that kind of knowledge
in his mathematics program and that the time that it
would take to upgrade him to a grade ten or 11 which
is required for a technical position would be this much

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opposed to a great deal longer if he was at the grade six level.

Q All right and then I --

A I would know or I would assume those kind of things.

Q I have it then that you're wedded to that kind of educational criteria. Let's turn now to the apprenticeship program. First of all, who sets the apprenticeship standards for entry?

A The apprenticeship boards in the province and in the Northwest Territories.

Q Yes, and have you formed any judgement as to whether those standards are too strict?

A No, I haven't. I think that they're probably pretty reasonable. The people have a great deal of experience in this and if the people can't challenge that entry examination and pass it, the chances of them succeeding and benefiting from the program are probably pretty slim.

Q Well, let's leave aside their test and I'm all in favor of testing, do you think their educational requirements are too strict?

A No.

Q What are they basically?

A If you're in the electrical trades, usually about a grade 11 and the other kinds of trades, grade ten and the odd one is a grade nine.

Q Yes, and would you agree with me that those educational requirements are going to

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put

direct entry to that apprenticeship program beyond the reach of most northerners -- most native northerners?

A Those are the entry requirements that are suggested levels of education Mr. Scott, but I believe that the apprenticeship board will let anyone challenge their entry examinations in Alberta. This is case anyway.

Q Well then, is it your proposition that one should be permitted to enter the apprenticeship program regardless of your educational qualifications, as long as you can pass their test?

A Yes.

Q All right. Yes. Well now, what do you think about the test? Do you think the test is fair to ^{the} native and white northerners?

A I believe it's necessary so that people don't enter the program and put them in a failure situation. I think --

Q But aren't the apprenticeship tests fundamentally the reflection of a southern white lifestyle and background?

WITNESS BEHN: So is the guy that goes to grade 12 in Yellowknife.

Q All right. Yes, I agree.

WITNESS VIRTUE: I think I would have to agree with that.

Q Yes. Well isn't it then that the test is too strict. Not in terms of -- or too reflective of another kind of background and training?

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A Not in my view Mr. Scott.

Q Not in your view. Well,
now, what about the age requirements. Why is it that
no one should be able to become an apprentice until after
he's over 25 years old?

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A That's not true as far
as I know.

Q What is the age qualifi-
cation for apprenticeship?

A 17 years old.

Q What is the cut-off?

A I'm not aware that they
have -- an upper cut-off?

Q An upper cut-off.

A I'm not aware of it.

Q If they had one what would
you say about it, that would be unnecessary, wouldn't
it?

MR. HOLLINGWORTH: What kind
of a question is that, "If they had one what would
they say about it?" Let's establish if they do have
one.

MR. SCOTT: Well, I'm
advised --

MR. HOLLINGWORTH: Why comment
on fiction?

MR. SCOTT: I am advised that
no one is entitled to enter a welder's apprenticeship
program if he's over 25 years of age.

WITNESS BEHN:

A I could --

Q Now I agree with my
friend that many people will, before they're 25, have
selected their career opportunity, but also in a northern
training program many won't and what I ask is, is that
kind of age restriction, in your judgment, a desirable

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1 one?

WITNESS VIRTUE:

2 A Mr. Scott, I'm not aware
3 of that. If that's a condition then I'm not aware of
4 it. The pamphlet that I have here,
5 "Apprenticeship Opportunities in Alberta"
6 say:

7 " Entrance requirement: Age - apprentices must
8 be at least 16 years of age.

9 Education - apprentices
10 must have a basic minimum education. More is
11 an advantage and certainly desirable."

12 If there's any upper age limits I'm certainly not aware
13 of it.

14 Q Well, would you see any
15 merit in an upper age limit?

16 A No, not particularly.

THE COMMISSIONER: Do you want
to add something, Mr. Behn? You got drowned out in this
argument over --

WITNESS BEHN: Well, I thought
he stated the fact that 25 was an upper age limit. I
know a fellow in Trunk Line who is at least 40 and he
just completed his welding apprenticeship last year.
So I would --

MR. SCOTT: Q Well now, let's
come to the subject we were dealing with at the end of
yesterday and the question I really posed for you is:
Whether the time frame being adequate, it would be
possible to develop a program that would give northern
peoples construction skills sufficient to enable them

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to compete for jobs other than the bottom rung jobs in construction, and I ask you to look at this question in this context. We've been talking about three years of construction, but in fact there will be much more than that because of the looping program and the oil pipeline and other construction facilities that may follow a successful application by the applicant here, so we're talking, let us say, about a construction program of pipelines that may continue for a decade in the Northwest Territories. In that context, can you approach the question I asked you?

WITNESS VIRTUE: Is it possible to develop a training program to provide skills for the construction industry, that's the question?

Q Yes, for this construction project, and the ones that will follow it.

A Yes, I think that's possible.

Q How would it be done?

A That, sir, is a more difficult question.

Q Has any thought been given to that by you, or is that beyond your jurisdiction?

A It's, at this moment it's beyond our jurisdiction. Nortran's responsibility is to administer a training program for jobs in the operating and exploration and production area, and we've had little involvement with the construction field.

Q Have you made any

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1 recommendations to your sponsors or principals about
2 such a program?

3 A Yes, we've had discussions,
4 Mr. Scott, of a very exploratory kind of nature.

5 Q Well, what do I understand
6 from that, that such a program may be developed?

7 A I indicated earlier that
8 it was not Nortran's responsibility to develop such a
9 program.

10 Q Well, let me just ask
11 you, Mr. Virtue, because you're experienced in this
12 educational field, what are the difficulties that
13 you foresee in connection with such a training program?
14 Leave out money and time for the time being.

15 A Those are two good ones
16 that you should leave in there.

17 Well, I think that there is
18 two major difficulties, I think, outside -- in addition
19 to the time and money. One of them has to do with the lack
20 of opportunities in the -- for training in the pipeline
21 construction industry. My understanding is that there
22 has been relatively little activity in pipeline construc-
23 tion in Southern Canada in the last couple of years.
24 If my understanding is correct, this again is the best
25 place to train people on a training-on-the-job kind of
26 situation on operating pipelines. If there aren't
27 any construction going, obviously the opportunities
28 are not there. So that's one difficulty.

29 The second difficulty that
I would foresee is that our sponsor companies do not

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1 carry out construction programs themselves. They carry
2 it out through contractors and sub-contractors and
3 sub-sub-contractors, and their ability to influence
4 what happens to the trainee when they have contractors
5 and sub-contractors and unions involved become consider-
6 ably more difficult than what they would be if the
7 person was employed directly by the -- one of our
8 sponsor companies. So those are two sort of major
9 difficulties, sir.

10 Q I take it that the
11 relationship between pipeline construction companies
12 and pipeline proprietors, like Arctic Gas and Foothills,
13 is sufficiently friendly that if a program were
14 developed it is likely that applicants could be placed
15 and supervised.

16 A I think that they would
17 be in a better position to answer that, Mr. Scott.

18 THE COMMISSIONER: I think the
19 two points you've made about training on the job only
20 being available if you've got a pipeline under construc-
21 tion and you can place people there for training, and
22 the second point you made seems also to be a good one.
23 People that formed Nortran, the people in the Nortran
24 program, the northerners are their employees; on pipeline
25 construction they might be working for Morrison-
26 Knudson or Brown & Root, which are firms as large in
27 many instances as -- well, perhaps not as large as
28 the oil companies but perhaps as large as A.G.T.L. and
29 companies like that. They're not necessarily people that
30 you can send memos to saying, "I want you to do this

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1 and that."

2 That's the point you're
3 making, I take it.

4 A Yes, exactly.

5 MR. SCOTT: Q Well, Mr. Virtue,
6 dealing with your second observation, don't you feel
7 that in the face of a carefully developed program that
8 is a difficulty that could be overcome, or minimized,
9 bearing in mind that the companies that will be hiring
10 these persons or providing them on-the-job experience
11 have some kind of interest in maintaining reasonable
12 relations with oil and pipeline companies?

13 MR. CARTER: I think that Mr.
14 Virtue said that would be a question better put to
15 representatives of the pipeline companies.

16 THE COMMISSIONER: Yes. Well,
17 that's my feeling too, Mr. Carter, but I suppose Mr.
18 Scott wants to exhaust the panel of whatever light they
19 have to shed on the problem and they've run a program,
20 they're the only people who appear to have run a
21 program seeking to train northerners for placement in
22 the industry and they've made clear the limits of
23 their own experience. But if Mr. Scott wants to pursue
24 this I'm not going to stop him. You gentlemen feel
25 free to tell us when you think you've gone as far as
26 your own experience justifies.

27 A Now we've forgotten the
28 question, I think. Will you try that again, Mr.
29 Scott?

MR. SCOTT: Yes. The second

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1 objection you've raised is about the fact that
2 trainees in a construction training program will be
3 employed not by your sponsor companies but by
4 construction companies. I suggest to you that in the
5 case of a properly developed program you would be able
6 to devise ways to assure a minimum level of training,
7 bearing in mind that the pipeline construction companies
8 and the pipeline companies have a continuing constructive
9 relationship one with the other, and they're anxious
10 to be nice to each other.

11 A So you're suggesting to
12 me that this can be done?

13 Q I would have thought
14 neither of these difficulties, or let's take the second
15 one, that the second difficulty is not one that's
16 insuperable, bearing in mind the close relationship
17 between the pipeline owner companies and pipeline
18 construction companies.

19 A And pipeline unions.

20 Q Yes.

21 A Most of the spreads are
22 unionized. I'm an optimist, Mr. Scott, so I don't
23 think that it's -- what was your word, "insuperable" --
24 however, I don't want to underestimate the difficulties.
25 We have considerable difficulty in the Nortran program
26 where the people are employed directly by the sponsor
27 companies and it seems to me that you'd just magnify
28 those to a considerable degree when you start having
29 them employed by contractors, sub-contractors, and
30 you have the involvement of the unions, and so that's

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1 my best answer, sir.

2 Q I take it that you said
3 yesterday that this is one of the verythings you're
4 going to attempt to work out in the Nortran plan be-
5 cause you're very conscious of the fact that your
6 people who leave for higher wages should be placed in
7 jobs with construction companies that will enable them
8 to continue their training.

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1 WITNESS VIRTUE: There's two
2 ways to do that. They don't necessarily work for
3 construction companies, Mr. Scott. The people who are
4 at the technical trades level have a certain competency.
5 I would -- my recommendation^{would be} that they would be with the
6 client inspection staff. They would then have the
7 opportunity of working around the facilities and construc-
8 tion and they would have the opportunity for reasonably
9 high wages and they would continue to progress and
10 develop in their particular trade or technical area.

11 Q But failing that, the
12 problem that you raised yesterday of placing these
13 people with construction companies on the pipeline in
14 places where they can advance their education is a
15 problem of the same dimension that you've described in
16 commenting on the construction training program.

17 WITNESS GIROUX: I don't think
18 that's quite true, Mr. Scott. I think you're looking at
19 -- just in terms of numbers, a substantial difference.

20 WITNESS VIRTUE: Looking back
21 at my testimony, I did not suggest that they would have
22 to be put in with construction companies, Mr. Scott.

23 Q No, but the problem you
24 raised yesterday is that you're afraid that your training
25 people are going to abandon their training program in
26 Edmonton, move north for the high paying jobs that are
27 dominantly offered by the construction companies.

28 A And by the client company's
29 inspection staff.

30 Q Yes, but the client's

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1 inspection staff people aren't going to earn anything
2 like they earn on the construction jobs, are they?

3 WITNESS GIROUX: That's new.
4 We've been led to believe that that's not necessarily
5 true.

6 Q All right. But I take
7 it that in responding to Mr. Bell's question yesterday,
8 one of the things you suggested you were going to try and
9 do was to see that these people could get placed in jobs
10 that would enable them to continue their training.

11 WITNESS VIRTUE: Yes sir.

12 Q I suggest to you that that
13 means that the existing program is going to have to deal
14 ultimately with construction companies and trade unions.

15 A Well, and I'm suggesting
16 to you Mr. Scott that they can do it by putting the people
17 in the inspection staff.

18 Q Right. Well are you going
19 to do anything to assist the people who would seek work
20 on the construction staff?

21 WITNESS GIROUX: I don't think
22 we can answer that. I think that question has to be
23 answered by Canadian Arctic Gas and Foothills Pipe Lines
24 To date, we haven't any --

25 Q I'm talking about your
26 own trainees.

27 A Certainly.

28 Q Well, are you going to try
29 and get them jobs in construction if that's they want
30 that are suitable for training?

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1 A You're suggesting that,
4 trainees you mean that we have in operations and maint-
3 enance training if they desire to leave that type of
4 thing and go into construction?

5 Q Yes.

6 A We'd help them as much as
7 we could. We wouldn't encourage it but we would certain-
8 ly help them.

9 Q Yes, and that is a problem
10 of the same type as the problem you've described in
11 connection with the construction training program I've
12 been talking about dealing with construction companies
13 and trade unions.

14 WITNESS VIRTUE: Yes, but
15 helping them get a job in the industry is somewhat
16 different than operating a training program, Mr. Scott.

17 Q All right. Well now,
18 let's turn to counsellors. I take it that counsellors
19 are a central part of your educational program?

20 A Central part of our program,
21 yes.

22 Q Yes, and are you familiar
23 with the experience with counsellors in Alaska in
24 general terms?

25 A In very general terms.

26 Q Yes. Now, I'd like you
27 to tell me what you regard as a suitable education or
28 qualification background for a counsellor.

29 WITNESS GIROUX: I guess I
30 wouldn't think that that's a -- that that would be a

Behn, Giroux, Virtue
Cross-Exam by Scott

primary consideration. We have a counsellor in the Mackenzie Delta that I believe has about a grade four education. He's had a wide range of experience within industry. He's an Inuit and well respected in that community.

Q Yes.

A As I say he's got a grade four. We also have a counsellor that has a year of university.

Q Well, let me ask this, is it preferable in ^a native employment program that the counsellor be a native?

WITNESS VIRTUE: In my view it is.

Q All right, that's one qualification. I take it that you don't regard educational background is of any particular significance. Are there any other qualifications?

A I think the major qualification is an interest in and an ability to communicate ^{with} people and an interest in helping people.

Q Let's turn to counsellors in a slightly different context now. You've utilized counsellors as part of your training program. In Alaska they use counsellors regularly as part of the regular pipeline construction work force, and I want to know if you think that there are any ^{other} things a counsellor should have if he's going to be utilized in that way? For example, should he be familiar with the job?

A That's certainly helpful,

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1 Mr. Scott and that's -- and desirable. Often that can
2 be acquired after, if you have the interest in working
3 with people and the ability to communicate well with them.
4 The knowledge of the job can often be acquired after-
5 wards.

6 Q Yes. Well now, should he
7 have some training in counselling techniques?

8 A That would be useful and
9 perhaps desirable.

10 Q Because I take it that the
11 counsellor, whether it's in your program or in Alaska
12 really is a kind of intermediary between the trainee
13 or the northern employee in the construction analogue,
14 the employer represented by first-line supervision and
15 the other employees.

16 A In our program, that's
17 the situation.

18 Q Yes, and his role is to
19 a certain extent to not simply to hear the trainee out
20 but to mediate the development of solutions for a
21 particular problems.

22 A Yes sir.

23 Q Yes. Well now, in your
24 case, the counsellor is employed by the training program.
25 Have you any views as to by whom counsellors utilized
26 in construction or maintenance should be employed, bearing
27 in mind their mediation function?

28 A Let me relate first to
29 our program Mr. Scott. I think it's useful to have the
30 when
31 counsellors employed by Nortran, because Mr. Behn has a

Behn, Giroux, Virtue
Cross-Exam by Scott

1 problem to deal with a trainee in Gulf Oil, he is not
2 responsible to that plant superintendent at Gulf. There-
3 fore I think he feels a little bit more comfortable in
4 what actions he might take because he's not dealing
5 with his direct superior.

6 Q He has a little more
7 influence too doesn't he, being outside?

8 A I believe so.

9 Q Yes.

10 A Now, it seems to work
11 well in our program if you can make the switch into
12 construction; it would seem to me that a similar kind
13 of situation might work for the same reasons in a
14 construction situation.

15 Q Well, what follows from
16 that? Any counsellors utilized in construction would
17 be employees of the owner rather than employees of the
18 construction company?

19 A I would see them being
20 more desirable to be employees of the owner, rather than
21 the construction company.

22 Q In any event, by whoever
23 they're employed, I take it it's a central characteristic
24 of their function that they should have some independence
25 as between the employee and the employer.

26 A Yes, I think that's
27 desirable Mr. Scott.

28 Q I take it that one of
29 their duties is to attempt to develop modifications in
30 employer response to employee difficulties in appropriate

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Cross-Exam by Scott

cases?

A Yes, I think that's fair.

Q For example, the employer is going to fire a person. The counsellor may want to intervene to modify or reverse that decision or at least explain it.

A Yes sir.

Q Is that in fact how counsellors operate in Nortran?

A Yes, I think the matters that you've been talking about describe quite well what our counsellors do. Mr. Behn, would you agree?

WITNESS BEHN: Yes, that's --

Q Are there any difficulties inherent in that, and what I'm thinking of is the possibility that the counsellor is able^{to} obtain a different kind of rule for the trainee than for the regular employee.

A No I don't think we ever try change the rules as such. If a guy can't make it, then he just can't make it. There's no way that I can take a guy and say, "now, he's a native northerner and that he's going to stay there regardless." That would be ridiculous. That's -- I mean that would ruin the whole thing.

Q No, but I understand that. But I take it that the rules that may apply with some inflexibility to experienced southern workers have to be modified and applied in a slightly different fashion to northern trainees, so that they can get their experience

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Cross-Exam by Scott

1 and their work feet organized and fit into the job
2 properly.

3 WITNESS VIRTUE: I think that's
4 fair, that the counsellors work to modify the sanctions
5 that might otherwise come down on a southern worker.

6 Q Yes and--

7 A And any serious infraction
8 of the rules, they're dealt with the same as
9 anyone else.

10 Q Has that created problems
11 in terms of general employee morale?

12 WITNESS GIROUX: Yes, I believe
13 it has on occasion.

14 Q Are there any plants where
15 counsellors exist under your Nortran plan in which the
16 employees have a bargaining agent such as a trade union?

17 WITNESS VIRTUE: Yes, there are.

18 Q What has been the relation-
19 ship with the bargaining agent? I ask that because it
20 seems to me that a counsellor performs a function that is
21 not unlike a union steward operating at his best should
22 perform.

23 A I hadn't thought of it
24 that way, Mr. Scott. The one or two plants that I'm
25 aware of where there are bargaining units, the company
26 has said to us that they would like to deal with their
27 union and that it's probably not necessary for us to
28 become involved with them and I think Mr. Giroux, that's
29 the situation to date. At least that's my up to date
awareness of it.

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WITNESS GIROUX: That's correct
and there haven't been any serious problems yet.

Q Are the trainees within
the bargaining unit in those plants?

A No, they are not.

Q No. Can you give us
the names of any plants where counsellors exist or do
their work and where there is a trade union bargaining
agent?

A Yes. There's the Gulf Oil
Rimbey plant, Gulf Oil Strachan plant and I believe
the Shell Oil Jumping Pond gas plant.

Q Now, I'd like to ask each
of you if you could give us the benefit of your experience
in listing and analyzing the problems that northern
employees appear to exhibit in taking wage employment
under this program. Obviously, the existence of
counsellors indicate that there's an apprehension that
there will be those problems. I'd like to find out
what they are and find out what judgement you gentlemen have
as to how they may be resolved.

Now first of all, let's take
alcohol. What do say about alcohol and employment as
you've seen it and what can you tell us about the
dimension of that problem and dealing with it?

A Mr. Scott, I've been with
the program since the start and I guess I've known every
trainee that's come and gone. I've become reasonably
familiar with the reasons why the trainee left. I guess
in a good number of cases, alcohol is a cause or the

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1 effect of a cause and I guess there we get back to
2 the loneliness factor. Trainees in a new situation,
3 a new town, lonely, so where do you go? In the bar.
4 In some cases, it leads to a termination because of
5 liquor infractions on the job or missing work continuous-
6 ly. In other cases and I should add that in most cases,
7 the trainees are able to adapt but it is serious problem.
8 It also leads to problems I think that are not necessarily
9 only associated with native people, like impaired driving
10 charges and loss of driver's license which in some
11 cases are required for the job.

Behn, Ciroux, Virtue
Cross-Exam by Scott

1 It's a problem, there is no
2 doubt about that.

3 Q To what extent have you
4 been able to begin to develop an approach to this
5 problem? If you have begun to develop one, in what
6 direction is it going?

7 A Well, we really haven't
8 developed much of an approach. We've been in touch with
9 Alcoholics Anonymous to try to get advice and information
10 on how we might best handle the situation, but I think
11 it all goes back to the fact that the individual has
12 got to recognize the problem and ^{want to} quit, and our counsel-
13 lors are on top of this thing inasmuch as they are
14 continually talking to the trainees with the problems
15 and trying to illustrate that that type of behaviour
16 in all likelihood will end in their termination.
17 There's no solution really. We try to get the trainees
18 involved in recreational activities. We've had excellent
19 co-operation from plant workers in the various small
20 towns to encourage the trainees to get involved in the
21 Social Clubs, in their curling activities, hockey,
22 whatever. You still have to rely on the individual to
23 a large extent, he's got to want to do this.

24 Q Well, have you developed
25 any views, for example, and it's been a problem in
26 Alaska about the desirability of social drinking on
27 jobsites? I'm not speaking of during working hours, we can
28 leave that aside for the moment, but is that something
29 that in the interests of a program like this
30 should be prohibited ^{or} permitted or controlled, or what

Behn, Giroux, Virtue
Cross-Exam by Scott

1 do you think?

2 A Are you talking about
3 a camp situation?

4 Q A camp situation or a
5 confined plant situation.

6 A Well, my own opinion
7 definitely it should be prohibited.

8 Q Are there any other
9 comments on that?

10 WITNESS VIRTUE: I might think
11 that in certain situations, you know, you'd have to
12 develop the scenario, but maybe this should be controlled
13 in some situations. In the Nortran experience the
14 people have access to alcohol and they are all adults
15 and they're free to do as they wish. The counsellors
16 provide the support and encouragement to the ability
17 they can, to have them to take up other activities.
18 That's what we try to do, Mr. Scott.

19 Q Yes, but it's not, is
20 it, Mr. Virtue, simply a question of (a) providing
21 a counsellor, and (b) the employees being free to do
22 what they wish? Any job situation is structured to
23 lead to, hopefully, to certain -- the development of
24 certain situations, positive situations, usually. What
25 I'm saying to you is, have you any views about how
26 a construction project or an operations project
27 should be structured to deal with alcohol and alcohol-
28 related
29 problems?

30 A I don't think I can
add to anything we've already said. Mr. Giroux

Behn, Giroux, Virtue
Cross-Exam by Scott

1 says in a camp situation a confined situation
2 it probably should be prohibited; in other less structured
3 situations perhaps it could be controlled.

4 Q Well now, what about
5 any problems associated with family relationships and
6 members of your program?

7 WITNESS GIROUX: There are
8 problems.

9 Q What sort of problems?

10 A I would say the main
11 problem is the difficulty of many of the wives to cope
12 with living in the south. We find that most of the
13 frustrations that occur with the trainees themselves
14 occur after work hours. Problems don't occur on the
15 job, by and large. Personal problems may lead to
16 drinking after hours. It's very difficult for many of
17 these young married women to sit in a trailer all day
18 long while the husband's at work, sitting in front of
19 the T.V. set. It is a serious problem.

20 Q Have you run into any
21 problem, domestic problems arising where wives or
22 families have been left behind?

23 A You mean left behind in
24 the north?

25 Q Yes, in the north.

26 A I don't believe so. As
27 a matter of fact, it's usually the other way around.
28 We think a guy's coming out single and he brings a
29 wife and two kids.

30 Q Well now, what is your

Behn, Giroux, Virtue
Cross-Exam by Scott

1 response to these things? How do you gauge the
2 dimension of the problem and what ideas have you about
3 responding to it in terms of structuring the job?

4 WITNESS BEHN: Well, the
5 problems that you're talking about, the domestic
6 problems, are those problems where it's ~~to~~ individuals
7 say not being able to cope in the south. Now I don't --
8 I worked on a program since 1971, first as a trainee
9 and now as a counsellor, and there is -- it would be
10 awful difficult to structure -- I don't see any
11 feasible way that you could structure a job so that a
12 guy doesn't have any marital problems. If there was,
13 I'd be the first one to join up. I mean it's -- there
14 is no cure.

15 Q Well, yesterday for
16 example, we talked and you raised, I think, one of
17 you, the desirability of structuring the work week,
18 bearing in mind how far the man may be from his
19 community or how close, in order to make it easier for
20 him to have contact with home. You also spoke of the
21 business of providing equality of transportation to
22 help those people deal with their domestic situation,
23 I suppose in part. What I'm getting at is, are there
24 other things like that that can be done to make it
25 easier for northerners to stay with a program like this,
26 or with a project of the type the applicant has in mind?

27 WITNESS GIROUX: One thing
28 we've done, Mr. Scott, in the past that's been
29 reasonably effective, I think, there's a young native
30 lady from Edmonton that we hire on a sort of a consulting

Behn, Giroux, Virtue
Cross-Exam by Scott

1 as required basis. She visits the wives and the
2 families of trainees very soon after they locate in
3 the south, and she discusses with them some of the
4 problems that might occur. How do you find a doctor?
5 How does a washer-dryer work, things I suppose we
6 take for granted. She spends time with these young
7 ladies and tries to help them adjust. Beyond that,
8 there just doesn't seem to be too much we can do.

9 WITNESS VIRTUE: One thing,
10 Mr. Scott, that we have done from time to time is
11 encourage the wife of a trainee to enroll in a training
12 program, which has happened, and encourage the wife to
13 seek work, if that's a suitable alternative.

14 This seems to give them some
15 activity to occupy their time and make them feel more
16 part of the training program.

17 Q Have you formed any
18 opinion as to whether domestic relationships on a
19 program like this remain stable, or improve, or
20 deteriorate?

21 WITNESS GIROUX: I think it's
22 difficult, I think that's a difficult question to
23 answer. I think often if there's a problem it exists
24 right from the start, the problem existed before the
25 trainee came south and it still exists. I think one
26 thing we've found, we've been spending more time with
27 the wives trying to explain the objectives of the
28 program and where the husband might progress to, to
29 what level he might progress to, and we find often that
30 the wives become a ^{very} strong influence on the husband

Behn, Giroux, Virtue
Cross-Exam by Scott

1 in that regard. I know several trainees that probably
2 would have left if their wives hadn't insisted that
3 they remain in the south and train.

4 WITNESS VIRTUE: I think, Mr.
5 Scott, too, the fact that the trainee is bringing in a
6 regular steady kind of income appeals to a number of the
7 wives, the kind of security, if you like, that they have
8 in the training employment situation and that may add
9 some stability to it. That's just my opinion, sir.

10 Q Well, let's let that
11 lead onto the question of money. Have you observed any
12 problems about handling money, budgeting, things of that
13 type which northerners have to deal with in your
14 program about which you can give us any general guidance?

15 WITNESS GIROUX: Yes sir, we
16 do have problems.

17 Q What sort of problems
18 are they and how do you try to deal with them?

19 A Well, one of the first
20 things most trainees buy when they come out is a stereo.
21 This is usually followed by a car. As you are well aware
22 there are a number of agencies that are very anxious
23 to lend money at very high interest rates, and many of
24 the trainees are very susceptible to this. During
25 the orientation program at Fort Smith the matter of
26 financial budgeting and handling of finances are
27 discussed, and I believe on occasion we brought in the
28 local bank manager to discuss ways and means of
29 obtaining money and handling it properly. In addition,
30

Behn, Giroux, Virtue
Cross-Exam by Scott

1 we ask our counsellors to visit the trainees very
2 shortly after he arrives at the southern training site
3 to sit down with the trainee and help him develop a
4 very simple budget. Nonetheless there still are
5 problems. I don't think that that's relegated necess-
6 arily only to northerners.

7 Q No, but you see what I'm
8 concerned about and am trying to get your help on is
9 if this construction project goes ahead, if you have
10 problems with your 100 trainees, there are going to be
11 mammoth problems in the north, white and native, of
12 this type and I'd like to get your experience in how
13 they can be dealt with, how they can be minimized.
14 Now that's one example. Is there an educational program
15 about budgeting and use of money? Are there other
16 techniques that can be developed to respond to this
17 difficulty?

18 A There is, I suppose you
19 could call it a technique. We encourage the trainees
20 to join the Credit Unions of the companies they're
21 employed with. They can join the Credit Union and
22 deposit money through payroll deductions but naturally
23 the Credit Union is aware of their wages, the length of
24 time with their particular company and they've provided
25 many of the trainees with considerable assistance, not
26 only in lending them money but providing counselling
27 and in times of problems.

28 Q Anything else on the
29 subject of money and budgeting?

30 A We have one other problem

Behn, Giroux, Virtue
Cross-Exam by Scott

1 I might just mention for your information that's been
2 a plague for the last five years is the telephone, and
3 some of these people have run up some horrendous phone
4 bills, but we had one young fellow from -- well, I won't
5 say where he's from, but we had one young trainee that
6 had run up quite a substantial telephone bill so I
7 cornered him one time and said, "Look, you're spending
8 four or \$500 a month on your telephone. It's kind of
9 ridiculous."

10 "Look," he said, "some people
11 like to drink and some people like to gamble, but I
12 like to talk on the telephone so mind your own
13 business."

14 So what can you do?

15 Q Well, I like to drink, and
16 then I like to talk on the telephone. What about
17 discrimination ^{on} the job, to what extent is it a diffi-
18 culty and what are the ways of dealing with it?

19 WITNESS BEHN: When I started
20 in the program in 1971, I came not knowing what I was
21 getting into, only that in three years there was going
22 to be a pipeline. This is 1976 and there still ain't
23 no pipeline. The first jobs that I went into I found
24 that people were wondering who I was, what I was doing,
25 what I was going to do. They discriminated in a sense
26 of the native problem that has existed in the south for
27 many years and in the north. I formed the opinion
28 that if I could do that job as well or better than they
29 could, then there was no reason why I should be con-
30 cerned with what they had to say or do that would be
discriminatory towards me.

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Cross-Exam by Scott

It didn't take very long after I had proved that I could do something just as well or better than they could that they accepted me as a producing member for that company.

In some cases where a trainee doesn't -- say, isn't outgoing, is shy and doesn't say anything, and we do have those kind of trainees that come down. It is harder for the trainee to say get over that first initial hump of starting to talk with, or communicate with the people that he is working with. So the discrimination problem becomes, say magnified in a way that the guys can say, not necessarily hassle the guy but make him feel not quite part of the group.

Until the trainee is able to relate to the guys, start to communicate and say prove himself as a member of that group, that discrimination kind of activity goes on but not in a really, you know, say a blatant kind of display.

But I would say that by and large that 5 years since the program started till now, the attitudes, the information they have, the acceptance, the people are starting to accept the training program as something that the companies have to do in order to prepare the people for the northern pipeline and I have seen -- Art mentioned in his testimony that some of the people that are dead set against the training program may be not only discriminatory in a sense of race or whatever but because of northern trainees getting extra benefits. Sometimes when they get to know the whole thing, they

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turn right around and see that there is no need to have that kind of a drawback in training somebody or having the guy work with them. But if you take a guy and get him mad at you, I mean, you are working in a dangerous place, you know, the guy could turn the wrong valve and do you in or something, you know.

So, I would think that the thought process would be that the guy realizes that that guy has to learn that job and starts to teach the guy. In the beginning they didn't know anything and we were the guinea pigs of the training program.

Q Well, I presume that in the northern training program, native trainees working at an Imperial Oil plant or wherever form a very small proportion of the work force. Is the problem of discrimination going to increase or decrease in your judgment when native northerners form a larger and more significant part of the total work force?

A I would say numbers wouldn't have anything to do with it. I would say that the performance that the northerners put on is what is going to determine whether or not there is say an increase or a decrease in discrimination. If 50 native northerners showed up at a gas plant someplace, you know, hypothetical and they could be absorbedⁱⁿ the work force. If those 50 people proved that they could do a job and do it right and safe, then I'm sure that the majority of the work force would accept them as part of their team.

You will always find people that -- you will always find bigots in any group.

Behn, Giroux, Virtue
Cross-Exam by Scott

I know Indians that are bigots so there is no -- I wouldn't try to generalize or stereotype any kind of a situation as far as discrimination would go.

Q Well apart from exhorting the native northerner to work as well or better than his white counterpart to meet this problem, is there any other solution or any other direction in which an employer should be moving in an effort to deal with this problem?

WITNESS GIROUX: We definitely have a responsibility, Mr. Scott. When the program initially started a number of trainees, 16, the number that went into Rocky Mountain House and the supervisory and lines management or the supervisory staff at that particular site and the co-workers had no idea what the program was about. We hadn't done a proper job of informing the people that were going to be doing the training on the objectives of the program. Since that time, we make a point of trying to get into all the sites at least once or twice a year to sort of review the objectives of the program and alleviate some of the fears that may be created amongst co-workers.

These plants all experience turnover of the regular staff and supervisory staff and we think it is important to do this on a continuing basis. As long as they understand the program, they seem to accept it even if they don't necessarily agree with it, so I think this is a fairly important function.

WITNESS VIRTUE: I think also, Mr. Scott that our supervisor seminars that we have -- the two day seminars that we have from twice a year help

1 sponsor an attitude and understanding and appreciation
2 of what the sponsor companies are trying to do. It's
3 by belief that this helps considerably in this matter.

4 Q Well, do any of you have
5 any other ideas about how this problem can be approached
6 on a construction project that is going to involve
7 let us say six thousand people, many from southern
8 Canada, and many, hopefully, from the north?

9 What should we be planning?
10 What should we be trying to do to minimize the difficulties
11 in this critically important area, discrimination?

12 For example, should we
13 be looking at something like training native foremen,
14 or native middle management. Should we be looking at
15 native work crews? What sort of things should we be
16 looking at, instead of simply saying, "well, we'll face
17 that problem when we come to it."

18 WITNESS GIROUX: Maybe you
19 might want to consider not encouraging northerners to go
20 into the relatively short-term actual pipeline spread
21 type of situation. I think the comments that you have
22 made are very valid, utilizing northern foremen, middle
23 management type people with the bulk of northerners
24 working in areas more in the civil construction sector
25 of the pipeline. In other words the clearing of the
26 compressor pads, the building of the compressor stations,
27 the types of situations that are going to be longer
28 lasting of a longer construction season; that may be one
29 method.

Q Well, what about training

Lehn, Giroux, Virtue
Cross-Exam by Scott

1 native foremen and supervisors in middle management?
2 Or remove "native" and say, northerner?

3 WITNESS VIRTUE: Well, that's
4 one of the progressions that we hope that the current
5 Nortran trainees will get to, Mr. Scott. That they
6 will move into positions of lead hand, foremen, in fact
7 some of them are lead hands already.

8 And when the facilities are
9 operating up here, they will be in that kind of a
10 position.

11 THE COMMISSIONER: Mr. Scott's
12 question is one that I'm sure everyone in this room
13 would endorse, "yes, let's train native northerners"
14 and by that I mean all northerners, "to become foremen
15 and to achieve middle management positions, so that when
16 you start construction of this pipeline, they will be
17 there." That's something as I say, all of us in this
18 room will endorse, but are we being realistic, or
19 would we be kidding ourselves?

20 Let me put it this way. You
21 said, to fill these positions, to even work in a skilled
22 position on pipeline construction you have to have on-
23 the-job training, and that would mean that you should
24 have been last year, ^{at} the Sarnia-Montreal pipeline job.
25 It means that you should be in Alaska now, I suppose,
26 achieving this training. Well, if to get an ordinary
27 skilled position on the pipeline you have to have that
28 on-the-job training before you even apply, is there
29 any realistic way of training northerners to achieve
30 positions of more importance than those. That is, to be

Behm, Giroux, Virtue
Cross-Exam by Scott

1 foremen, to be running the job, to be middle management.

2 Is that something that's realistic or are we just

3 kidding ourselves to talk about it in that fashion?

4 Are you able to comment on that?

5 WITNESS GIROUX: I think

6 it's realistic, Mr. Commissioner. I'm convinced that

7 there are individuals, native northerners in the north

8 today that are working as foremen with say Hire North,

9 that work as general foremen with the Forest Service

10 on fires. There are these people in the north today

11 that have indicated the leadership qualities and the

12 organizational qualities to do this sort of thing, and

13 I guess maybe what you are looking at for these

14 individuals is some exposure to the pipeline industry in

15 advance of construction.

16 Q Then you would leave

17 the government and local industries faced with the job

18 of replacing them. That's something that has to be

19 looked at too. Well, forgive me for interrupting, but

20 I just felt like interrupting.

21 MR. SCOTT: Mr. Virtue, perhaps

22 it is unfair of me to press you with these questions and

23 I do so only because you are first man up, but what

24 troubles me is the applicants have indicated a commitment

25 to hiring northerners on construction as well as other

26 matters, and they're going to have large work forces of

27 6,000 people, none of us wants discrimination or a race

28 riot in the course of that construction. What I want

29 to know is what planning has been done for that day and

30 that's not your responsibility of course, but what ideas

Behn, Giroux, Virtue
Cross-Exam by Scott

1 do you have that you can give us from your educational
2 experience to help us get a handle on that problem well
3 in advance?

4 WITNESS VIRTUE: Mr. Scott,
5 I'm answering your questions the best I can.

6 Q Well, is there anything
7 else you can tell us about how to deal with the problems
8 of discrimination that may exist in a work project of
9 this dimension operating under these pressures?

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Behn, Giroux, Virtue
Cross-Exam by Scott

1 A I don't have anything
2 further to add right now, sir.

3 THE COMMISSIONER: Well, would
4 that be a suitable moment to break for coffee?

5 MR. SCOTT: Yes, sir.

6 THE COMMISSIONER: I take it
7 that we're moving right along here?

8 MR. SCOTT: We're moving right
9 along.

10 (PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

11 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

12 MR. SCOTT: Q Mr. Virtue, have
13 you anything further to add on how we might approach
14 the problems of discrimination^{and} on the subject of native
15 crews or native foremen?

16 A Mr. Scott, Mr. Giroux,
17 Mr. Behn and I had an opportunity to discuss for a
18 few minutes at coffee time here and we wondered if it
19 would be more useful and more helpful to you if we
20 could return to Calgary and meet with all of our
21 staff, the other counsellors, the^{industry} training co-ordinators
22 and so on and put together our best ideas and thoughts
23 on these matters that you've raised.

24 Q I'd be very grateful for
25 that^{as} I'm sure the Inquiry would. When you're at work
26 on that, can I just add a couple of little projects
27 for you? I think it would be useful to know the
28 -- by synopsis the components of what you've described
29 as your orientation program and continuing orientation
30 program for supervisors. It would be nice to know how

Behn, Giroux, Virtue
Cross-Exam by Scott

1 that program is structured, what it covers, and in add-
2 ition what other things you might find desirable if that
3 program were applied to a let us say construction or
4 operations project itself rather than a training
5 program.

6 A Yes sir.

7 Q Now I don't want to test
8 you too much, but I note that with respect to the
9 orientation program for trainees that is government
10 run at Fort Smith, that a number of your trainees have
11 gone through that program and a number haven't. Has
12 there been any difference that you've perceived in
13 performance or adaptability between those that have
14 been through the program and those who haven't?

15 WITNESS GIROUX: I guess that
16 requires rather a subjective analysis, I think. I
17 think the trainees that haven't gone through the
18 orientation that we put special effort and spend extra
19 time with them on the jobsite reviewing many of the
20 things that are brought up at the orientation. I would
21 suggest, I guess, that probably the trainees who have
22 gone through the orientation are by and large better
23 equipped. Often we bring people onto the program
24 between orientations and then it's sort of a judgment
25 call on whether that person should be brought back to
26 Fort Smith and interrupt his training at the plant or
27 wherever, for the orientation. That decision is usually
28 made between the counsellor, the trainee and the
29 supervisor at the plant. Often the supervisor may
30 say, "Well, no, he's doing well, he's coping well, he

Behm, Giroux, Virtue
Cross-Exam by Scott

1 doesn't seem to have any difficulty, he's progressing
2 well on the job, maybe we should leave him where he is."

3 I guess I would think that
4 those that do attend the orientation are better equipped.

5 Q Mr. Virtue, you said
6 yesterday that there were perhaps some missing components
7 in the program that if it were entirely under your
8 control you might want to add. I wonder if you would
9 give some thought to that and let us have your judgment
10 about what might be added to that program to make it
11 more effective?

12 WITNESS VIRTUE: Did I say
13 that, Mr. Scott?

14 Q I thought you did. If
15 you didn't you don't have to do the work. If you did as
16 I think the record will reveal, I'd be grateful of a
17 more precise statement of what --

18 A My statement was that we
19 have, as I recall ^{it,} /is that we've done some experimenting
20 with that program and sometimes it was three weeks in
21 length, sometimes it was two weeks in length, and the
22 components have varied a little bit. At the moment
23 I'm satisfied with what is in the two-week program
24 that's scheduled to start on April 25th.

25 Q Could we also have a
26 synopsis of that and any comments on it with a view,
27 as you will understand, to looking at this kind of
28 orientation program as a model in operation that maybe
29 applied to some other project later on?

30 A Yes sir.

John. G. Goux, Virtue
Cross-Exam by Scott

1 Q Well now, let's come to
2 construction hiring. Do you see any reason why, any rea-
3 son in principle or practice why the DACUM approach
4 that you have utilized in training persons for opera-
5 tions and maintenance could not with modifications be
6 applied to training persons for construction and
7 developing construction skills?

8 A In some construction
9 skills it could be applied, Mr. Scott, in my view.
10 In others it would not seem to me to be too appropriate.

11 Q What would be the
12 characteristics of the latter category?

13 A Which, the ones that
14 would not be appropriate?

15 Q Yes.

16 A Those are the semi-skilled
17 jobs the unskilled jobs and so on. I think it would
18 be not too useful to develop a DACUM system to monitor-
19 ing the progress of a dishwasher or a bull cook or
20 --

21 Q And that's basically be-
22 cause in those jobs there isn't much to teach, isn't
23 that it?

24 A That's correct, sir.

25 Q All right. Have you
26 found the DACUM approach a useful one in measuring
27 skills and measuring applicants' abilities to develop
28 them?

29 A Yes, the DACUM approach
30 is used to monitor the progress and evaluate him in an

Benn, Giroux, Virtue
Cross-Exam by Scott

1 subjective manner, the skills that he has acquired on
2 the job, and we found it quite useful, Mr. Scott.

3 Q Well now, as to construc-
4 tion hiring, which is of course something you've not
5 been engaged in, but I'd be grateful if you could let
6 us have your views on the most effective way to provide
7 advance information on construction, employment and
8 training for potential workers in the Mackenzie Valley.
9 What sort of program is best, in your judgment, to
10 communication information and to obtain reasonable
11 results?

12 A I wonder if I could
13 include that in my growing list of items, Mr. Scott?
14 I'm sure that our counsellors and others have ideas on
15 that also.

16 Q I'd be grateful for that.
17 Also I'd be grateful for any information you can develop
18 as to the characteristics that a construction recruiting
19 program might have in terms of developing information
20 about applicants' existing skills and so forth. Do you
21 follow me?

22 A I think so.

23 Q In other words, when you've
24 got to the stage where in advance of construction you've
25 got a construction applicant sitting in front of you
26 at the desk, what information do you want to get from
27 him at that time that will ultimately be useful in
28 determining whether he can be hired ultimately as
29 a construction employee? What is the data that you
30 want to get in the course of your recruiting program

Behn, Giroux, Virtue
Cross-Exam by Scott

1 for construction? Now just one or two other matters.
4 First of all in dealing with construction jobs I take
3 it most of them traditionally are defined by either
4 educational qualifications or the possession of certi-
5 ficates or age characteristics that have been developed
6 by employers and unions in Southern Canada, in a diff-
7 erent setting.

8 A I believe that's correct,
9 Mr. Scott.

10 Q Yes, and the tendency
11 therefore is to measure an applicant against these
12 no doubt useful but relatively arbitrary and traditional
13 standards.

14 A Relatively arbitrary and
15 traditional?

16 Q If you haven't got Grade
17 12 and you don't have a certificate and are over 30
18 you're not going to get this kind of job.

19 A Yes, Mr. Scott, there
20 are those kinds of considerations too, but I'm sure
21 you understand the kinds of skill that's required of
22 a pipeline welder.

23 Q Yes.

24 A I don't think those
25 kinds of certification of skills are arbitrary. They
26 are required if you're going to operate safely and
27 soundly in the industry.

28 Q What I'm suggesting to
29 you is that in a project of this type where the
30 applicants indicate a commitment to a measure of

Benn, Giroux, Virtue
Cross-Exam by Scott

1 northern employment, is there some virtue to defining
2 the jobs, redefining the jobs not in terms of the
3 traditional southern standards but in terms of the
4 precise skills and abilities that are required for
5 each of them?

6 A I think that would be
7 useful, sir.

8 Q And I take it that one
9 advantage of that is that it would mean that in employ-
10 ing northerners on the project/^{if}that scheme were
11 developed, it would^{not}/be necessary to have reference
12 automatically to the standards that in Southern Canada
13 have been utilized.

14 A Now that may be true,
15 Mr. Scott.

16 Q If you were able to
17 define a job in terms of what was done on that job
18 and what skills and abilities were precisely required
19 to do it, and hoping the unions cause no trouble,
20 you/^{then}wouldn't have to ask the chap for a certificate.

21 A That's correct.

22 Q And you would agree with
23 me that it seems likely that that approach to job
24 definition is going to remove obstacles that now
25 stand in the way of northern employment.

26

27

28

29

30

1 A Again, that has to be
2 qualified sir. You'd have to say in certain occupations
3 that's possible.

4 Q Yes. Well now, one last
5 -- one last question. It relates to the costs of the
6 Nortran program. Mr. Bell asked you some questions yester-
7 day about the component of your total bill that is paid
8 for by Federal and other governments. I want to approach
9 it another way. When you're doing some work for us back
10 in Edmonton, would it be possible for you to break out
11 the costs of your program, particularly the total costs
12 on an annual basis or on a man basis for on the job
13 training?

14 A I think that we can give
15 you gross figures on that Mr. Scott. We don't accumulate
16 all the costs of this program. The costs -- many of the
17 costs are borne by individual companies. There are
18 sponsoring companies. We accumulate some of them but
19 I think we could give you some help in that matter.

20 Q Well that would be useful.
21 I think it would be helpful to know at least in a general
22 way the type of costs that are borne by the supporting
23 companies. I would presume that wages is the very
24 substantial element there.

25 A That's correct.

26 Q Yes, and the idea being
27 to see if we can get a handle on the cost of on the
28 job training within the Nortran program, and it would also
29 be useful to have any other cost figures you can give
us, but I'd ask you to zero in on that matter so that we

Behn, Giroux, Virtue
Cross-Exam by Scott

1 can perhaps get some idea of what's at stake, if an on
2 the job training program were developed in connection
3 with the construction project.

4 A I think we can be of some
5 help there.

6 Q I'll just poll my advisors
7 and see if there's anything else they want to know.

8 MR. SCOTT: Those are all the
9 questions I have and I'd like to thank the panel very
10 much for their efforts today and their efforts next
11 week.

12 MR. HOLLINGWORTH: Is that
13 setting a time limit on responses?

14 MR. SCOTT: No, no. No.

15 THE COMMISSIONER: Any re-
16 examination?

17 MR. HOLLINGWORTH: No re-
18 examination sir.

19 THE COMMISSIONER: Well thank
20 you very much Mr. Virtue, Mr. Giroux, Mr. Behn. I think
21 we all appreciate your coming here and giving us the
22 benefit of your views and being so patient and coopera-
23 tive in cross-examination and in undertaking to look
24 into these matters that Mr. Scott has raised. We think
25 that probably we can arrange for you to let us have
26 that information by letter. It may not be necessary
27 for you to return to discuss it further. But, if it
28 is, I'm sure you'll be happy to do that and we'll look
29 forward to that. So thank you again gentlemen.

30 (WITNESSES ASIDE)

1 MR. SCOTT: Mr. Commissioner,
2 Mr. Bell, I understand is ready and as he indicated
3 yesterday, he proposes to make an opening statement
4 before he begins to call his evidence. I understand
5 that he's also entitled to move up to the front table.

6 THE COMMISSIONER: I don't
7 know about that.

8 (LAUGHTER)

9 THE COMMISSIONER: Do you want
10 us to adjourn for a moment Mr. Bell so you can --

11 MR. BELL: That would help
12 sir.

13 THE COMMISSIONER: All right,
14 we'll just stretch our legs for a minute or two.

15 (PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

16 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

17 THE COMMISSIONER: Whenever you're
18 ready.

19 MR. BELL: Yes Mr. Commissioner,
20 just before calling our first panel, I'd like to make a
21 few preliminary remarks and hope that it will help
22 yourself and the other participants and members of the
23 public get an idea of the direction that we're heading
24 with our evidence.

25 In presenting evidence at the
26 formal hearings of this Inquiry, the Indian Brotherhood
27 and the Metis Association take their lead from what the
28 Dene have been saying in the community hearings. We
29 view the formal and community hearings as equally
30 important parts of the same process.

1 The function of our formal
2 evidence therefore is primarily to support and translate
3 in EuroCanadian terms the themes that have emerged over
4 the past year in the communities and to place them in
5 historical and global perspective.

6 There are several major themes
7 which have asserted themselves in the communities and
8 which our evidence will reflect. First and foremost is
9 that the impact of this project cannot be adequately
10 understood except as it affects Dene life as whole.
11 The testimony of the Dene at community hearings has been
12 given without reference to the formal divisions of
13 evidence, technical, environmental and socio-economic,
14 that we must follow in this forum.

15 The Dene have been talking about
16 their universe. It is not possible for any of the
17 formal categories of evidence to encompass that universe.
18 Accordingly, in hearing our evidence here, we are asking
19 the Inquiry to recognize the dangers in the view that the
20 overall impact of the proposed pipeline is merely the
21 sum of the specific impacts whose details have occupied
22 our attention so far.

23 What our evidence will endeavor
24 to do is to explain the project as it will affect the
25 entire system of the Dene way of life.

26 The second theme of course is
27 that Dene are a distinct people. A nation with a
28 special relationship to the land.

29 Third, many of the specifics
of the recent colonial experience of the Dene have been

1 recounted by the Dene themselves. It is clear that they
2 are now concerned for their very survival as a people.
3 The destruction inherent in colonialism pervades Dene
4 life in every sphere; political, economic and cultural.

5 Fourth, the Dene desire to
6 control their own future and through a land claims
7 settlement, to develop as individuals and as a people
8 according to their own priorities and pursuing alterna-
9 tives of their own choosing.

10 Fifth, the Dene have said as they
11 have been saying since 1971 that they must have their
12 land claims settled prior to any major development on
13 their land. We will be urging this Inquiry to recommend
14 that there be no right-of-way permit granted until land
15 claims have been settled. Accordingly, the evidence of
16 each and every witness that we call is intended to
17 address the issue of prejudice to a land claims settle-
18 ment.

19 Bearing this in mind, we think
20 that our evidence can be seen as falling under two
21 broad headings or sections. Section A, a statement of
22 the rights of the Dene, a description of the land
23 claim, and how the impact of a pipeline would erode these
24 rights and prejudice the claim.

25 Section B, concerns the basic
26 right to alternative development. The potential
27 for that development and how the land claim will
28 permit it and how the impact of a pipeline would deny
29 it. This is not to suggest that these are water-tight
30 compartments. Indeed, there will be a good deal of

1 overlap in the testimony of individual panels. These
2 divisions will serve as a general guide to the way in
3 which our case is organized.

4 Under the first heading, Section
5 A, we will be presenting six panels of witnesses. The
6 first panel will provide an introduction to aboriginal
7 rights from the legal and historical perspectives and
8 will place aboriginal rights in the context of Canadian
9 and world experience. The Dene declaration and the
10 reality of the fourth world will be introduced. The
11 right of self-determination for native peoples under
12 international law will be demonstrated.

13 Political rights are the
14 central consideration ^{in a claim} for self-determination and our
15 next three panels focus on these issues.

16 Panel two deals with the
17 concept of nation as it has been experienced by native
18 people in Canada, and as the key to cultural survival
19 based on experience in the third world. We will call
20 evidence to show that the spirit of the Canadian
21 Constitution is supportive of recognition of the Dene
22 nation.

23 Our third panel describes the
24 colonizing role of local of territorial political
25 institutions in the Northwest Territories, and outlines
26 the Dene system of political decision making.

27 Panel four places the experience
28 of the Dene in its global context by analyzing colonial
29 patterns of development which parallel those in the
30 Northwest Territories. In this regard, the situation

1 of native peoples in the Amazon Basin and Australia
2 will be described. The lessons we can learn from
3 development experience in underdeveloped countries forms
4 the rationale of the evidence of this panel.

5 Next, we will examine the
6 impact on native people of several large scale projects
7 in Canada, for the purpose of showing the lessons they
8 hold for the Northwest Territories, including the
9 James Bay project, the Northern Manitoba Hydro Scheme,
10 industrialization in northwestern British Columbia and
11 the C.P.R.

12 This panel will also present
13 discussion of the impact of the Trans-Alaska pipeline
14 on the native claims settlement in Alaska.

15 The sixth panel under the first
16 heading will present evidence relating to Dene land use
17 and occupation to prove the factual basis of the Dene's
18 aboriginal rights. We will document by means of maps,
19 the extent and intensity of land based activity. The
20 results of original research concerning the quantity
21 and significance of country food used by native people
22 will be presented. The history of land use by the Slavey
23 people and a study of Loucheux place names also form
24 part of the evidence of this panel.

25 The second broad section of
26 our evidence relating to alternative development will
27 commence with a panel which will describe the meaning
28 of development and underdevelopment. The actual experi-
29 ence of resource development in the Northwest Territories
30 and the institutional arrangement needed for the Dene to

1 achieve their developmental goals. Through reference
2 to the peculiar psychological relationships fostered
3 by colonialism, we will argue that not only the
4 colonized but also those who serve colonialism suffer
5 from its inherent anti-developmental nature.
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1 We will show that the
2 decolonization of the Dene is in the interest of true
3 development for all Canadians.

4 The second panel under Section
5 B will present a detailed discussion of economic
6 rents in the Northwest Territories. Who benefits from
7 resource development and why ? What consequences this
8 has for the region? What new arrangements both in
9 terms of royalties and control are available to alter
10 existing patterns and provide benefits to native
11 people?

12 We will look at the actual
13 record of the Imperial Oil Refinery at Norman Wells and
14 the Pointed Mountain gas development. We will also
15 speak to the distribution of benefits that would be
16 generated by the proposed pipeline and related
17 developments under present institutional arrangements,
18 and suggest how that distribution could be altered
19 under different institutional arrangements.

20 Our third panel in Section B
21 will discuss community-based development, what it
22 means and how it can be achieved. WE will present
23 evidence on selected Indian economic development
24 projects, both in the Northwest Territories and else-
25 where, and show the criteria for success suggested
26 by this experience. We will also examine the potential
27 for renewable resource development under Dene control
28 as an alternative to non-renewable resource extraction
29 under outside control.

30 We will close the case by

1 presenting the panel of Dene leaders.

2 THE COMMISSIONER: Thank you,
3 Mr. Bell.

4 MR. BELL: That concludes my
5 opening remarks, sir. It's now 12:30, perhaps we
6 could break for lunch.

7 THE COMMISSIONER: All right,
8 we'll adjourn till two, two o'clock.

9 (PROCEEDINGS ADJOURNED TO 2 P.M.)

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Manuel, Sanders, Fumoleau
In Chief

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BELL: Mr. Commissioner, I think we're ready to proceed with our first panel. I would like to introduce to you, starting on your left, sir, Mr. Douglas Sanders, whom you may be acquainted with; Mr. George Manuel, and Father Rene Fumoleau. The fourth member of our panel, Professor Richard Falk, who is going to speak to the question of the status of self-determination for native peoples under international law is unable to make it at this date. He will be called later. Perhaps I could point out ~~that~~ this is a phenomenon which may recur since the vast majority of our witnesses are neither employees nor consultants of the organizations I represent, and we have to accommodate their schedules as best we can.

GEORGE MANUEL, sworn
DOUGLAS E. SANDERS, affirmed
FATHER RENE FUMOLFAU, sworn:

DIRECT EXAMINATION BY MR. BELL:

Q I'll start by qualifying the panel, and I'll start with Mr. George Manuel.

Now, Mr. Manuel, I understand that you are an Indian of Shuswap origin and the grandson of a medicine man.

WITNESS MANUEL: That's right.

Q And that you received your early education at the Kamloops Indian Residential School in British Columbia.

A That's right.

Q You are past chief of

Manuel, Sanders, Fumoleau
In Chief

1 your tribe, past president of the North American Indian
2 Brotherhood , and the past chairman of the National
3 Indian Advisory Board.

4 A That's right.

5 Q Since 1970 you have been
6 the president of the National Indian Brotherhood.

7 A That's true.

8 Q And last year at the
9 Founding Conference of the World Council of Indigenous
10 Peoples you were elected as president.

11 A That's right.

12 Q Could you tell us what
13 is the World Council of Indigenous Peoples?

14 A They are indigenous
15 minorities or indigenous people who have not any con-
16 trol over the government of the country, and the
17 Indigenous Council consists of the Maori people, the
18 aboriginal people of Australia, the Laplanders or
19 they're better known as Laplanders; they're Same
20 people in the three Scandinavian countries -- the Inuits
21 of Greenland and 11 countries from South and Central
22 America, plus United States and Canada. It's a
23 federation of national organizations within the various
24 countries ^{that} came to a meeting in Port Alberni, British
25 Columbia, 19 countries in all, and formed themselves
26 into a world organization. Now the purpose of the
27 organization is -- I'd like to read it -- is, as they
28 passed a resolution that the concept of aboriginal
29 peoples title should be recognized as a doctrine of
30 international law. That was one of the resolutions that

Manuel, Sanders, Fumoleau
In Chief

1 was passed. The other resolution, the other responsi-
2 bilities they assigned themselves from the conference
3 is the meaningful exchange of information for organiza-
4 tional, legal, sociological, cultural, etc., to
5 strengthen voluntary associations of indigenous people
6 in various parts of the world , reduce the possibility
7 of physical and cultural genocide , combat racism,
8 ensure political, economic and social justice, establish
9 and strengthen the concept of indigenous and cultural
10 rights. These are the responsibilities that the
11 new organization has assigned itself from the inter-
12 national assembly that was held the 27th of October
13 to 31st of October in Port Alberni, British Columbia,
14 1975.

15 Q Thank you; and I under-
16 stand you are the author of a book entitled:

17 "The Fourth World."

18 A That's right.

19 Q Moving to you, Father
20 Fumoleau , what is your present position?

21 WITNESS FUMOLEAU: I'm a priest
22 working in Yellowknife. I also belong to the Congrega-
23 tion of Oblate Mission of Mary Immaculate.

24 Q Could you briefly review
25 your education for us, please?

26 A Well, I studied philoso-
27 phy at Solignac in France, 1946-1947; then I studied
28 theology at the same place, 1949-1952; and I was
29 ordained a priest in 1952.

30 Q Would you outline your

Manuel, Sanders, Fumoleau
In Chief

1 professional experience to the Inquiry, please?

2 A I was posted at Fort
3 Good Hope in the Northwest Territories from 1953 to 1959.
4 In Fort Franklin, 1960 to 1968. Again at Fort Good
5 Hope, 1968-1969, and I've been in Yellowknife since
6 1970.

7 Q And you are the author
8 of a book called:

9 "As Long As This Land Shall Last."

10 A Yes.

11 Q Which is the history
12 of Treaties 8 and 11.

13 A Yes.

14 Q Turning to you, Mr.
15 Sanders, you are a barrister and solicitor in
16 Victoria, British Columbia.

17
18 (QUALIFICATIONS & EVIDENCE OF G. MANUEL MARKED
19 EXHIBIT 563)

20 ("THE FOURTH WORLD" by G. MANUEL/M. POSLUNS
21 MARKED EXHIBIT 564)

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Sanders, Manuel, Fumoleau
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WITNESS SANDERS: That's
correct.

Q You receive your B.A. from
the University of Alberta in 1960 your LL.B from the
University of Alberta in 1961 and an LL.M from the
University of California at Berkeley in 1963.

A That's correct.

Q From 1963 to 1969, you
were in private practice as a lawyer in Vancouver.

A That's correct.

Q I understand that for a
part of that time you were associated with the Commission-
er?

A That's correct, for four
years.

Q From 1969 to 1972, you
were Assistant Professor, Faculty of Law, Windsor
University.

A That's correct.

Q In the summer of 1972,
you conducted research on indigenous policy in Australia
New Zealand, Papua New Guinea and Fiji?

A That's correct.

Q From 1972 to '74, you were
the Director of the Native Law Center at Carleton
University.

A That's correct.

Q In the summers of 1973 and
'74, you were a lecturer in the pre-law program for
native students at the College of Law at the University of

Sanders, Manuel, Fumoleau
In Chief

1 Saskatchewan.

2 A That's correct.

3 Q From August 1974 to May
4 1975, you were Legal Counsel and Research Coordinator
5 for the Union of British Columbia Indian Chiefs.

6 A That's correct.

7 Q From June to July 1975,
8 you were a volunteer advisor to the National Indian
9 Association of Panama under CUSO auspices.

10 A That's correct.

11 Q You've had experience in
12 litigation relating to Indians, and I understand you are
13 expert witness in the case of Kanatawat versus James
14 Bay Corporation.

15 A Yes. Mr. Justice Malouf
16 incorrectly describes me as an anthropologist in his
17 judgement.

18

19 Q Well, we'll send him a
20 nasty note.

21

22 You were also counsel in
23 the case of InRe Paulette otherwise known in these
24 parts as the caveat case?

25 A I was one of four lawyers
26 who were counsel at the trial of that case, yes.

27 Q You were counsel for the
28 N.I.B. in the case of Lavell versus the Attorney-General
29 of Canada and Canard versus the Attorney-General of
30 Manitoba.

Sanders, Manuel, Fumoleau
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A That's correct.

Q In the Supreme Court of
Canada. You've participated in other court actions
relating to Indian rights.

A That's correct.

Q You are also a member of
the bars of British Columbia, Alberta, Ontario and the
Northwest Territories.

A That's correct.

Q You are the author of the
publications and talks listed on page two of the appendix
to your evidence.

A That's correct.

THE COMMISSIONER: I think that
I should add that Mr. Sanders, before he came to practice
with me, articulated with the firm Russell and
Dumelin which is Mr. Steeves firm, who
represents Arctic Gas at these proceedings. So
forgive me Mr. Sanders, that may make you
respectable around here.

MR. BELL: Well, we aim to
please or displease everybody sir.

Q I'd like now to ask
George Manuel to proceed with his evidence.

WITNESS MANUEL: Thank you very
much Mr. Bell. Mr. Commissioner. First of all, I
would like to go on record as saying that I'm the

Sanders, Manuel, Fumoleau
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1 President of the National Indian Brotherhood and I
2 represent all the, what do you call registered Indians,
3 status Indians in Canada. I represent really 271,000
4 registered Indian people, and it's in this capacity
5 that I make my presentation to you and present the
6 evidence that I will be reading into the record.

7 I first would like on behalf
8 of the Indian people that I represent, I want to commend
9 you for the kind of justice that you have applied in
10 relation to the hearings that you've conducted in the
11 past two years to the Indian people. I think for the
12 first time that I've been in Indian work, I think you
13 know for quite a number years, and I think it's the
14 first time that I know of that Indian people have gotten
15 the type of hearing that your Commission is according
16 the Indian people of the Northwest Territories and
17 Indians of Canada.

18 So, I want to go on record in
19 thanking you for saying that justice is applied as it
20 is known to us. Thank you.

21 Now, I will go on to read the
22 presentation that I'm making here and presenting as my
23 evidence.

24 I welcome this opportunity to
25 give evidence to the Inquiry into the proposed Mackenzie
26 Valley pipeline, gas pipeline. For once, the voice of
27 the Indian people is being heard before a final ruling
28 on a major project is made. It is being heard by you
29 Mr. Commissioner and through you, the people of Canada.
30 Let us hope it is also being heard by the Government of

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Canada, because the government will be making a gross error if they ignore the voice of the Indian people raised at this Inquiry.

The Indian people are extremely restless and one more example of insensitivity could easily turn this restless mood into militancy. We've simply suffered far too long. My people are no longer willing to quietly live in deprivation and poverty. Indians all across Canada are demanding that their dignity as Canada's original people be restored and their aboriginal rights recognized.

The Dene Declaration proclaimed by the Indian people of the Mackenzie District has been a giant step towards achieving this goal. The Declaration has become a symbol to all Indian people. We do not intend to see it casually cast aside.

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I am a Shuswap Indian, as mentioned by Mr. Bell, from the interior of British Columbia. For most of my life I have been involved in the Indian organizational movement, and from childhood I have been involved in the issue of the rights of my people. In British Columbia, the organized pursuit of the recognition of aboriginal rights goes back to the 19th century, and continues to this day.

In 1927, following the attempt of the allied tribes of British Columbia for recognition of aboriginal rights, the Parliament of Canada amended the Indian Act making it an offense to raise money for the purpose of prosecuting claims for aboriginal rights. The law did not stop my people from organizing for their rights. They went underground and when the law was repealed in 1951, the issue was pursued as before.

This has been my experience. In recent years I have been across Canada many times. I have made visits to the Northwest Territories and have followed events here very closely. I know from experience what I am talking about when I speak of my people's determination to have our rights recognized.

And I must emphasize that the solution to our claims is not money. If the answer to Indian land claims and aboriginal rights was merely money, the conflict could be resolved with a minimal degree of haggling. Indians across the country would simply pry as much cash out of the Federal coffers as they could, and the Federal Government would sigh with relief as it washed its hands of

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Canada's original peoples.

This is precisely why the government has trumpeted the James Bay agreement as an ideal settlement. The James Bay Indians have given up forever all claims to the land Indians have inhabited from time immemorial and the Indians are becoming the responsibility of the Province of Quebec.

That agreement can be criticized on a number of levels. A good case can be made that it simply is a bad business deal; that the cash settlement amounts to less than \$1,000 per year per person for the first years of the settlement. But as far as the Indians in the rest of Canada are concerned, the financial specifics of the settlement are beside the point. The catastrophic clauses of the James Bay agreement are those sections which surrender title to the land. In the case of James Bay then, Mr. Commissioner, the opportunity has been lost for a new relationship to be established between the Indian people and Canadian society as a whole. Furthermore, most of the rights and programs acquired by the James Bay Indians, such as hunting and fishing rights, were already available. In other words, most of the rights and programs in the James Bay agreement did not have to be acquired by bartering Indian land and aboriginal rights -- the government just made it appear that way during negotiations. And what is most unfortunate is that the government is now using the James Bay agreement as a model in other land claim contests.

The government is correct in

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calling the James Bay agreement a "landmark settlement" in the following sense - it reveals precisely how Federal and Provincial Governments intend to resolve the Indian question in Canada. Apparently the governments intend to use land settlements to implement the 1969 White Paper that was uniformly rejected by Indians everywhere in Canada. As a result, land negotiations are being used to wipe out governmental obligations to the Indian people and hand over federal responsibility to the provinces.

We must acknowledge, however, that the James Bay Indians signed the agreement under duress. The James Bay hydro project was in full swing. Land was being cleared. Dams were being built. The water was rising. In other words, the James Bay Indians were attempting to salvage whatever they could out of an impossible situation. This is why Indians in contested areas are calling for a moratorium on all major developmental projects like the Mackenzie Pipeline. If Indians have learned any lesson from the James Bay experience, it is that negotiations made with a gun at your head are short-sighted, and in the long run to the disadvantage of Indian people. The lesson for Canada and this Inquiry is that a settlement made under this kind of duress is inevitably unjust.

I would like to make clear once again, that the main principle of land claims is that Indian title and aboriginal rights are not to be sold or extinguished. Negotiations are only intended to establish agreements between the governments and the

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Indian people on how the principles of Indian title
and aboriginal rights will be preserved, developed, and
put into practice.

In recent years I have
travelled extensively throughout the world and have
met with indigenous peoples from all corners of the
globe. I have visited Africa, Australia, New Zealand,
and Scandinavia. I have met with aborigines, Maoris,
Indians from South America, and Central America, and
Samé and other indigenous peoples of the world.

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The conditions of the different peoples vary as the different indigenous peoples in various parts of the world vary. In South America, physical genocide is being ^{practised} against our brothers and sisters. People are being murdered in much the same way as Indians in North America were massacred in the frontier region and it is not true that this happened only in the United States. It also happened here in Canada.

In Africa, many of the indigenous peoples have finally become citizens of sovereign political independent states. Others are still brutally oppressed by colonial and racist governments.

But what impresses me from my travels, Mr. Commissioner, is that aboriginal people everywhere share a common attachment to the land, a common experience and a common struggle. The Indian people of Canada and other indigenous peoples that I have met and seen have suffered and are still suffering from deprivation and exploitation by colonizers.

Today's colonizers, the corporations, are often supported by governments. Both have exploited the indigenous inhabitants by depriving them of their human rights and destroying their social, cultural, economic and political institutions. The result is the complete demoralization of the people, drunkenness and total dependence on the governmental institutions of the Europeans.

I believe it is our human right to retain our pride and our dignity. We must not forget

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1 that what the Indian people are now experiencing in the
2 Northwest Territories has already taken place in
3 southern Canada.

4 We, the aboriginal peoples of
5 southern Canada have already experienced our Mackenzie
6 Valley pipelines. Such projects have occurred time and
7 time again in our history. They were and are the
8 beginnings of the type of developments which destroy
9 the way of life of aboriginal peoples and robs us of
10 our economic, cultural and political independence. We
11 have seen so often before what projects of this nature
12 have done to our people and we protest the proposed
13 Mackenzie Valley pipeline because we know that our
14 human rights will be expropriated by lust and greed,
15 during and after the construction of the pipeline.

16 We are speaking from experience
17 when we protest and say that developments of this kind
18 can only be supported on condition that the Indian
19 people must first be assured economic, political and
20 cultural self-reliance. Without that insurance,
21 destruction is inevitable and recovery from that
22 destruction becomes the burden of the Indian people.

23 The original treaties signed
24 by Indians in Canada were not designed to equip Canada's
25 original people with the tools necessary to participate
26 with pride and independence in ever-expanding
27 transplanted European society. The treaties were merely
28 designed to damper active resistance on the part of the
29 Indians. The sum total of the benefit Indians received
30 in the old treaties are a pittance when once considers

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that half a continent was handed over in exchange.

Indians are determined not to allow the mistakes of the past to be repeated in the upcoming negotiations.

Consider what is happening today Mr. Commissioner. As you have probably noticed, the government has chosen to call the products of today's bargaining with Indians "agreements". For example, the government is careful never to refer to the James Bay Treaty, but rather, talks about the James Bay agreement. To refer to the product of negotiations as a treaty would imply that Indians are in fact a distinct nation in Canada, and as the 1969 Indian White Paper has shown, the government's goal is to eliminate Indian status in Canada.

Agreements accomplish this goal. Agreements like James Bay essentially amount to complicated real estate transactions. A treaty, as visualized by Indian leaders elsewhere in Canada however, should be an instrument calculated to provide ^{permanent} economical political power ensuring the survival of the signators as a people.

It is no coincidence that the sudden eagerness to solve Indian land claims occurs at a time when the industrialized sections of Canada are feeling the pinch because of the depletion of non-renewable resources, natural resources. One must bear in mind that when the original treaties were signed, Indians were given the lands that were the least attractive and at the time, industrially irrelevant. Undoubtedly, this

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1 is a major reason why treaties do not cover much of
2 Quebec, eastern sections of Canada, much of British
3 Columbia and the Yukon.

4 The governments of that day
5 assumed it was safe to leave the untamed wilderness
6 and muskeg to the Indians. Now these lands are important
7 for the resources beneath their soil. Corporations
8 desperately want to develop these resources and the
9 government suddenly considers the settlement of aboriginal
10 rights and Indian land claims urgent. The Indian people
11 of the north have been promised fantastic benefits from
12 corporate development and I think you heard a lot of it
13 this morning.

14 We of the south, in our earlier
15 communications with the non-Indian people were also
16 promised the same things. We were assured that education
17 would be provided also, housing, agricultural training,
18 and economic security through an adequate land base.
19 The statistics on unemployment, school drop-outs, bad
20 housing, percentage of inmates in jails of this country,
21 infant mortality and violent deaths speak for themselves,
22 Mr. Commissioner.

23 Along with this evidence, I am
24 tabling a statistical breakdown outlining the tragic
25 conditions of the Indian people in Canada.
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1 You will find this evidence
2 in Appendix B of my submission, Mr. Commissioner.

3 Let us consider the major
4 reason the early treaty promises fell flat, Mr.
5 Commissioner. These commitments were never realized
6 because we were never provided the political and
7 constitutional authority to enforce those commitments.
8 We were never given access to the nation's political
9 and economic institutions or allowed to participate
10 meaningfully in Canada's political and economic affairs.
11 In short, we were denied the right to self-determination.

12 Unless today's treaties or
13 agreements open the doors of participation and involve-
14 ment they will prove to be every bit as inadequate
15 as the previous treaties. Progressive land claim
16 settlements and aboriginal rights decisions are the
17 major vehicle open to Indians to establish permanent
18 and just economic and political arrangements in Canada.
19 Otherwise Indians will once again become an irrelevant
20 group living on the periphery of a society whose
21 government's decisions primarily benefit the country's
22 new arrivals.

23 Section 91 of the
24 British North America Act deals with those sections of
25 government that are the preserve of the Federal Govern-
26 ment. Article 24 states that:

27 "Indians and lands reserved for Indians"
28 are the responsibility of the Federal Government. The
29 British North America Act makes it clear that Indians
30 are a distinct nation of people in Canada. The authors

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1 of Canada's Constitution were forced to acknowledge
2 the Indian people as a distinct fact of political life
3 in their 1967 deliberations.

4 Mr. Commissioner, what we
5 are asking for now in our land claims and aboriginal
6 rights settlement is a further recognition of this
7 sovereignty as a founding nation of people in Canada.
8 Canadians are already familiar with the idea that
9 Canada was originated by two founding nations, the
10 English and the French. Indians are asking for the
11 same recognition as a founding people.

12 This does not mean that Indians
13 are racists, ^{or} want to expel the white society or shoulder
14 white society out of Canada's traditional Constitutional
15 arrangements. It does mean, however, that Indians do
16 want a degree of sovereignty never allowed Indians
17 before in Canadian society.

18 All sorts of parallels to the
19 French experience in Quebec can be made here. No one
20 will deny that accepting of the "French fact" in our
21 federation has meant an increasing ability for Quebec
22 to govern its own affairs. Yet Quebecers remain Canad-
23 ians. We feel that it is time for contemporary Canadian
24 to accept the Indian fact in our Constitutional setup.

25 We desire neither apartheid
26 nor assimilation but participation -- participation on
27 terms that will recognize our national identity and
28 will ultimately strengthen Canada as a whole. It
29 requires not extinguishment of our aboriginal rights
30 but their preservation. This non-extinguishment

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1 requires first the degree of sovereignty and self-
2 determination that will make it possible to control our
3 land base. And second, the re-organization of the
4 political institutions of the country so as to make a
5 place for us to sit and bargain with other Canadians
6 and the Federal Government at the highest levels.

7 The present structures do not
8 allow for our participation and continued development.
9 Since the minor changes brought about by the introduc-
10 tion of the federal franchise in 1958, we have made
11 some progress. Our situation will remain intolerable
12 and our future hopeless, unless further significant
13 changes are made. I must emphasize again that it is
14 mandatory that the Indian people participate in a
15 viable way in financial and governmental institutions
16 that currently preside over us.

17 One way that this may be
18 accomplished is by learning from the Maori experience
19 in New Zealand. There, the Maori's, New Zealand's
20 original people, have been granted seats in Parliament
21 as representatives of the Maori people. In fact, in
22 the last Labour Government in New Zealand the Maoris
23 were given Cabinet positions so that the Maori people
24 would be intimately involved in the country's major
25 political decisions.

26 Consider the fact that the
27 small Province of Prince Edward Island, with a population
28 of 110,000 people, is guaranteed four Members of Parlia-
29 ment, four Senators and a Provincial Government. A
30 proposal to elect Indian members to the House of

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1 Commons as representatives of Canada's original people
2 therefore does not appear unreasonable.

3 I think I'd like to elaborate
4 a little bit on this, Mr. Commissioner. One outstanding
5 example that sticks in my head, what benefit Prince
6 Edward has over us in terms of having the kind of
7 political institution that they have, and I want to
8 remind you again that I do represent 271,000 people.
9 Prince Edward Island has 110,000 people.

10 In 1970 the Federal Government
11 made available \$720 million for economic incentives for
12 the Province of Prince Edward Island because they had
13 the kind of political institutions that allowed them
14 to negotiate at the highest level. In the same year,
15 in 1970, the Parliament of Canada made available \$50
16 million for the Department of Indian Affairs for
17 economic incentives for the Indian people, and I think
18 that's a prime example of deprivation for our people
19 because we haven't got the proper type of participation.

20 Now I will continue. Now I
21 am not suggesting that the Maori arrangement is the
22 ideal model for the Indian people of Canada. It is not.

23 The Maori, like all aboriginal
24 peoples, are an exploited people. Their standard of
25 living is much lower than other New Zealanders and
26 their condition is much the same as ours with a slight
27 but significant difference, and from this we find not
28 a model but a clue to the cure for the deplorable con-
29 ditions of the aboriginal peoples everywhere.

However inadequate the living

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1 conditions of Maori, they are better than that of the
2 Indian people of Canada. They have a high standard of
3 education, and almost full employment. The Maoris have
4 also managed to preserve their culture.
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The degree of Maori development culturally, economically and politically can be measured exactly by the amount of participation they enjoy in the political institutions of New Zealand, because that level of involvement is greater than ours, helps explain why the Maori conditions is better than ours. And because their level of involvement is nevertheless slight and inadequate, explains why the conditions of Maori remain deplorably lower than that of the white New Zealanders.

Mr. Commissioner, it is hardly surprising that indigenous people in Canada are beginning to identify with the emerging countries of the third world. We share the common experience of poverty with them. Our lands and peoples have been exploited for the benefit of others and like the people of the third world, we are struggling for a new economic order.

While travelling in Africa, I was struck by the fact that economic independence and self-reliance does not necessarily immediately follow political independence, but at least many of the countries in the third world have a forum for debate and dialogue. They now have access to the world's political institutions and can use these structures to pursue their own objectives for development. Political independence gave them the tools to sovereignty to develop their nations economically. This we do not have to any significant degree.

I have said many times that while we identify in many respects with the third world

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community, we are not of the third world community. We are of the fourth world, the forgotten world; the world of aboriginal peoples locked into independent sovereign states but without an adequate voice or say in the decisions which affect our lives.

The challenge in this country is to learn from the past, to learn from other national arrangements and produce solutions that will be an example of justice for aboriginal people everywhere.

The conditions of the people of the Northwest Territories is better than the conditions of their brothers in the south. The people here have not yet been subjected to the total demoralization and oppression we have experienced. I pray they never will.

The Dene Declaration has given us hope and I file for the record, the National Indian Brotherhood's support of the Dene Declaration. Mr. Commissioner, you will find the evidence, Appendix C, of my submission in relation to the Dene Declaration. I would like to go on to read the Dene Declaration.

Statement of rights, the Dene Declaration. We, the Dene of the Northwest Territories insist on the right to be regarded by ourselves and the world as a nation. Our struggle is for the recognition of the Dene nation by the government and peoples of Canada and the peoples and the governments of the world.

As once Europe was the exclusive homeland of the European peoples, Africa, the exclusive homeland of the African peoples, the new world, North and South America was the exclusive land of the aboriginal

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peoples of the New World; the Amerindians and the
Inuits.

The New World, like other parts
of the world has suffered at the experience of colonial-
ism and imperialism. Other peoples have occupied the
land, often with force and foreign governments have
imposed themselves on our people. Ancient civilizations
and ways of life have been destroyed.

Colonialism and imperialism
is now dead or dying. Recent years have witnessed the
birth of the new nations or the rebirth of old nations
out of the ashes of colonialism.

As Europe is the place where you
will find European countries with European governments
for the European peoples, now also you will find in
Africa and Asia the existence of African and Asian
countries with African and Asian governments for the
African and Asian peoples.

The African and Asian peoples;
the peoples of the Third World have fought for and won
the right to self-determination, the right to recognition
as a distinct peoples and the recognition of themselves
as nations. But in the New World, the native peoples
have not fared so well. Even in countries in South
America where the native peoples are the vast majority
of the population, there is not one country which has an
Amerindian government for the Amerindian people.

Nowhere in the New World have
the native peoples won the right to self-determination
and the right to recognition by the world as a distinct

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1 people and as nations.

2 While the native people of
3 Canada are a minority in their homeland, the native
4 people of the Northwest Territories, the Dene and the
5 Inuits are a majority of the population of the Northwest
6 Territories. The Dene find themselves as part of the
7 country -- as part of a country. That country is Canada,
8 but the Government of Canada is not the government of
9 the Dene. The government of the Northwest Territories
10 is not the government of the Dene. These governments
11 were not the choice of the Dene. They were imposed upon
12 the Dene.

13 What we, the Dene, are struggling
14 for is the recognition of the Dene nation by the govern-
15 ments and the peoples of the world.

16 And while there are realities we are forced
17 to submit to, such as the existence of a country called
18 Canada, we insist on the right to self-determination
19 as a distinct people and the recognition of the Dene
20 nations.

21 We, the Dene, are part of the
22 Fourth World and as the peoples and nations of the world
23 have come to recognize the existence and the rights of
24 those peoples who make up the Third World, the day must
25 come and will come when the nations of the Fourth
26 World will come to be recognized and respected. The
27 challenge to the Dene and the world is to find the way
for the recognition of the Dene nation.

Our plea to the world is to
help us in our struggle to find a place in the world

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community where we can exercise our right to self-determination as a distinct people and as a nation.

What we seek then is independence and self-determination within the country. What we seek then is independence and self-determination within the country of Canada. This is what we mean when we call for a just land settlement for the Dene people.

Now, I also would like to read into the record Mr. Commissioner, Appendix D as my evidence and this is the resolution that supports the Dene Declaration by the organization that I represent.

It's motion 20 passed unanimously at the National Indian Brotherhood annual general assembly held in Truro, Nova Scotia, on August 27, 28, 29, 1975.

Moved by Ahab Spence, President of the Manitoba Indian Brotherhood, seconded by Bill Wilson of the Union of British Columbia, Indian Chiefs, that the Dene Declaration statement of rights be accepted and that the full support be given by this general assembly.

The Declaration subscribes to the principles that aboriginal rights must not be extinguished but preserved, that the settlement be one of land and political authority over that land, not cash compensation for extinguishment. Not cash compensation for extinguishment. In other words, what is required is a new political system giving a degree of political sovereignty to the Indian people never before experienced in this country.

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Of course the Federal Government could continue to exercise its responsibilities outlined in the British North America Act, as it has in the past -- essentially like an imperial power dealing with a colonized people.

The next few years are the most crucial in the settlement of aboriginal rights. For the sake of the Indian people and for all Canadians, I strongly urge the Government of Canada to seize this opportunity to break with the injustices of the past and negotiate with the Indians of the Northwest Territories within the framework of developing aboriginal rights, not extinguishing them. I cannot emphasize enough that we are not interested in cash settlements. We are not interested in giving up our birthright for a mess of pottage. The future of Canada's original people is intimately dependent on maintaining our rights and controlling the development of our lands. Without these rights we are condemned to repeat the disasters of the past.

Mr. Commissioner, the Northwest Territories is North America's last frontier. It can be developed like the frontiers of the past for the benefit of the newcomers and at the expense of the Indian people, or we can take a different, more humane route. We are challenging the Canadian Government to choose humanity over profits, decency over dollars and justice over self-interest. The time is long overdue for the establishment of a new social, political and economic order where the Indians and the white society

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1 can co-operate and interact in a positive manner with
2 pride and dignity.

3 It would be a gross injustice
4 to the Indian people of the Northwest Territories if
5 the exploitation and oppression that has taken place
6 in Southern Canada is allowed to be repeated here. I do
7 not want to see it happen, and it does not have to
8 happen.

9 To permit this pipeline to
10 be built against the wishes of the Dene and prior to
11 a just and equitable settlement of their claims would
12 mean repeating all the mistakes of the past. The choice
13 for Canadians is whether to entrench colonialism or to
14 entrench the democratic rights of the Dene. A land
15 settlement founded on the principles of my submission
16 will provide a once-and-for-all opportunity to break
17 with the past. Such a settlement will set this country
18 on a path to establish equality and justice. It will
19 be good, not only for the Indian people, but for Canada.
20 We must not let greed for a pipeline prejudice this
21 dream. Our goal now is not only to make a just and
22 equitable society a dream, but a reality.

23 Thank you, Mr. Commissioner,
24 for hearing me and for allowing me to present my
25 evidence to you.

26 THE COMMISSIONER: Thank you
27 very much, sir.

28 MR. BELL: A copy of Mr. Manuel's
29 statement and the appendices thereto have been submit-
30 ted as exhibits, as has a copy of Mr. Manuel's book,

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Cross-Exam by Sigler

1 "The Fourth World."

2 I've asked counsel to accommo-
3 date us in that if they have any questions that they
4 would wish specifically to direct to Mr. Manuel that
5 they do so at this time to permit him to catch his plane
6 this evening.

7 MR. SCOTT: We should perhaps
8 begin with Arctic Gas and Foothills; is the usual order
9 I think, isn't it?

10 MR. CARTER: Sir, I'd like
11 to consult with Mr. Steeves to be certain of our
12 position, therefore I'd like to see one of the
13 other participants proceed first.

14 MR. SCOTT: Well then perhaps
15 Mr. Hollingworth, do you have any questions?

16 MR. HOLLINGWORTH: I have
17 no questions.

18 MR. SCOTT: Mr. Sigler?

19 THE COMMISSIONER: You can be
20 seated, if you wish, Mr. Sigler, whatever suits you.

21 MR. SIGLER: Thank you.

22
23 CROSS-EXAMINATION BY MR. SIGLER:

24 Q Mr. Manuel, you do not
25 live in the Northwest Territories, I presume, in that
26 you have to catch a plane today.

27 A No, I do not.

28 Q How much time have you
29 yourself actually spent in the Northwest Territories?

30 A Well, I've been here at

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Cross-Exam by Sigler

1 least three or four times a year, and I once spent
2 about a month and a half in the Lower Mackenzie Valley
3 meeting and conducting adult education courses.

4 Q Which communities were
5 those in?

6 A This was in Yellowknife,
7 Fort Simpson, Fort Resolution, Hay River, Fort Rae.

8 Q And when was that?

9 A This was in 1968.

10 Q Now, how many people did
11 you say you represent in the National Indian Brotherhood?

12 A 271,000.

13 Q Did those people elect
14 you directly, or are you elected by native organizations?

15 A I think that our
16 organization is a three-tier organization, and the
17 makeup is much like the municipalities, the Federal
18 and the Provincial Government. I'm elected from a
19 general assembly that is delegated by the provincial
20 organizations from each of the provinces.

21 Q How many provincial
22 organizations are there in Canada?

23 A Nine provincial organiza-
24 tions and one Territorial, I mean two Territorial
25 organizations, I'm sorry. Nine provincial organiza-
26 tions and two Territorial organizations.

27 Q When you were elected,
28 representatives of those 11 organizations voted for
29 you.

30 A That's right.

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Cross-Exam by Sigler

1 Q Did all 11 of them vote for
2 you?

3 A I got in by acclamation
4 the last two elections.

5 Q What about -- you didn't
6 say that you spoke for all the indigenous people of the
7 world, even though you're president of that organization.
8 How were you elected there?

9 A I was elected by the
10 delegates that were chosen by the national organizations
11 from each country that attended the conference. I
12 think I should clarify for the purposes of the
13 Commission's information that I am really starting to
14 phase myself out of this position and phasing myself
15 into a new position, because you can't be president of
16 two organizations and survive.

17 THE COMMISSIONER: You won't
18 remain president of the ^{National} Indian Brotherhood of Canada?

19 A Well, I intend to step
20 down in my next election.

21 THE COMMISSIONER: Yes.

22 MR. SIGLER: On page 5 of your
23 testimony that was given today you referred in the
24 context of Africa to colonial and racist governments.
25 Are you saying or hinting that the Government of Canada
26 is a colonial and racist government?

27 A I'm not suggesting that
28 Canada is a racist government within the context that
29 you seem to be implying. I'm suggesting that we suffer
the same kind of oppression and deprivation and I think

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Cross-Exam by Sigler

the evidence that I have submitted in Appendix C in relation to statistics in which 58% of our people are unemployed, 90% of our people drop out before they reach Grade 12, our institutions are filled with Indian people in larger proportions than the rest of the Canadians, indicates that, you know, this system hasn't worked. There's something wrong with it. There is deprivation without a doubt faced by Indian people in the same way that the African and Asian peoples have been deprived.

Q So you're calling on the Canadian Government not to be racist, more than accusing them of being racist.

A I'm not calling on the Canadian Government ^{not} to be racist; I'm calling on the government to co-operate with us and co-operate with us in terms of our suggestions of what kind of aboriginal settlements we should acquire. The present terms of reference of the Minister of Indian Affairs who is really the hidden negotiator at the present time as far as aboriginal rights are concerned, his terms of reference is to extinguish aboriginal rights. To me that means . . . repealing Section 91-24 of the British North America Act. That means, you know, it's the same as the proposed 1969 White Paper, which was opposed by all Indians in Canada. Non-extinguishment means that we would be totally assimilated, that's what it means to me. Extinguishing aboriginal rights means the abolition of Indian people as a nation of people, as an entity of people that were here long before

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Cross-Exam by Sigler

anybody was here.

Q On page 15 near the conclusion you allude to saying in your opinion the pipeline should not be built prior to a just and equitable settlement of claims, and also at page 7 you refer to a sudden eagerness to solve Indian land claims by the government. In view of your last opinion that there shouldn't be development before there is a settlement, why are you critical of the sudden eagerness on behalf of the government to settle claims?

A We don't want a settlement within the framework that was in the terms of reference that the government has set in settling aboriginal rights. We want a settlement based on developing aboriginal rights, and I think permitting the Mackenzie Pipeline to go ahead within the frame of reference that now the government takes in settling aboriginal rights is to accept the fact that we want aboriginal rights to be extinguished and we categorically oppose that.

Q So you can't see a settlement being reached under the present terms of reference that the government has set for the negotiations?

A Not under the present frame of reference ^{that} the government is trying to negotiate a settlement on, but the people in government are human beings and I hope they will see our need and revise their terms of reference under which they negotiate aboriginal rights; and if that happens then maybe you'll have your pipeline.

Sanders, Manuel, Fumoleau
Cross-Exam by Sigler
Cross-Exam by Scott

Q Now you referred to the
Dene Declaration and read it as your evidence here today.
I believe that this is the first time that this
Declaration has been put into evidence before the
Inquiry.

THE COMMISSIONER: It was put
in at the communities.

MR. SIGLER: Oh sorry. I just
wanted to confirm that the Dene Declaration isn't an
instrument that you yourself wrote or --

A No, we're just supporting
it. I just went on record supporting it. I think I
read the resolution indicating the National Indian
Brotherhood's support for the Declaration for the
native people of the Northwest Territories.

Q So your involvement in
the Dene Declaration is simply one of being supportive
to it?

A Involved in it, yes because
the Northwest Territory Indian Brotherhood is a member
organization to the National Indian Brotherhood.

MR. SIGLER: That's all the
questions I have, Mr. Commissioner.

MR. SCOTT: Mr. Bayly.

MR. BAYLY: I have no questions
for Mr. Manuel sir.

CROSS-EXAMINATION BY MR. SCOTT:

Q Mr. Manuel, I was interested
to note your comment that the aboriginal people of New
Zealand have obtained some political status in the New

Sanders, Manuel, Fumoleau
Cross-Exam by Scott

Zealand governmental system and I wondered whether you were familiar with any examples of large development such as a pipeline that had confronted the aboriginal people of New Zealand and if you were, what part you thought the political representation of those people played in approaching or resolving the problem?

A I'm not aware of any in New Zealand you know, so I'm not qualified to answer in relation to any projects that have affected the Maori relationship with New Zealand.

Q Well one other matter then. You referred in your text to --

A I think I was citing the Maori example within the framework of the social development and political awareness that has taken shape in New Zealand and the kind of accomplishment the Maoris have made in terms of integrating on their own terms, and preserving almost totally, their culture.

Q Yes. Well, I was just concerned to know whether you knew of any example where that political power had been used by the aboriginal people of New Zealand to assist them ⁱⁿ dealing with a large industrial or commercial project.

A No, I'm not aware. I wasn't there that long.

Q Well now, one other matter, in your paper you referred to a number of other indigenous peoples, Greenlanders and the Samé and so on, who are members or whose organizations are members of the association and I presume from what you've said that all of them

Sanders, Manuel, Fumoleau
Cross-Exam by Scott

1 confront to a more or less degree the necessity if I
2 can call it that, of making some kind of adjustment or
3 accomodation with a larger society that surrounds them;
4 larger and usually European society that surrounds them.

5 I wonder if you could just list for us what, from
6 your observation and study, are the most important
7 problems that an aboriginal group face. Vis a vis

8 the dominant society that surrounds them. Obviously,
9 one is the political problem that you referred to.

10 What are the other ones, if they occur to you?

11 A The problem of
12 economics, the problem of cultural disposition through
13 development, I think is the major one. I think the Same
14 people are struggling with power corporations for
15 instance in Finland, Norway and Sweden in relation to
16 the -- you know, to try and to maintain their reindeer
17 hunting areas and to retain their lifestyle, and corpora-
18 tions are moving in to try to put up power dam projects
19 and other types of mining developments. I think it's
20 also happening in Australia. But I think the major
21 concern or the major problem that indigenous people are
22 faced with in all those countries, that's why they were
23 willing to form themselves into an organization, is
24 because their way of life has been destroyed and there's
25 no attempt at all to replace that way of life by any
26 meaningful means.

27 You know, their way of life is
28 actually expropriated without any real involvement on the
29 part of the indigenous people and the same consequences
usually erupts or comes into being as what has happened

Sanders, Manuel, Fumoleau
Cross-Exam by Scott

1 in southern Canada. I mean, our people -- you know.
2 I always like to point out that there's in a lot of
3 our communities in Canada up to 90 percent and in some
4 places 100 percent are without jobs. The kind of
5 involvement that we've had in terms of education has
6 been very minimal. I think there are two things going
7 against us, that's why we're -- I think we have the
8 same mental capacity to learn as anybody else, but I
9 think there is two major barriers, that's why we never
10 succeed and that is the cultural barriers. I think we
11 have a cultural understanding of life which is different
12 than the non-Indians who control those schools.

13 The other thing is I think we're
14 poor. I mean most of our people -- the majority of
15 our people have very low income. They live on welfare
16 and any race of people when they're poor, their ability
17 to compete in a school system -- in a general school
18 system decreases, in ability to go on to higher education
19 becomes non-existence after a certain grade.

20 Q Well, one other matter
21 Mr. Manuel, I ask you to assume just for the moment
22 that sooner or later there's going to be some rapid
23 economic development of the north. It may be a pipeline.
24 It may be something else, but there's going to be some
25 rapid economic development. I wonder if you can from
26 your own reading or experience point us to any good
27 models of how the adjustment is made between an indigenous
28 people and an economically dominant society surrounding
29 them when it confronts that kind of development?

A Well, I know --

Sanders, Manuel, Fumoleau
Cross-Exam by Scott

Q We have some bad models
at hand and I just wonder if you can point us to one
or two that you think are useful studies of the way
things might be done?

A Well, I think in my
presentation I pointed out the fact that there isn't
the political participation that is necessary to make
this kind of equal development take place. It's neither
in the Northwest Territories or in southern Canada and
I think I cited them already example purely to show you
as an example the degree of participation that took
place as far as the Maori's is concerned was the degree
of development that took place as far as they were
concerned. You know, that's very limited and I think I
cited to you the Prince Edward Island model in which
there's 110,000 people there and they have four members
of parliament, four senators in the provincial government
in which in 1970 they got because they had a good
political mechanism that's hooked right into the
national political machine of Canada, they were able
to get \$720 million in the same year because we didn't
have the political mechanism to negotiate or participate
or discuss with the Federal political system of this
country, we got only \$50 million that same year
appropriated for economic incentives.

I think that's, you know,
that's about as clear as a general example as I could
give. I think the people in the Northwest Territories
are looking for that kind of political participation as
Prince Edward Island, in the affairs of the country

Sanders, Manuel, Fumoleau
Cross-Exam by Scott

especially as it relates to the native people in the north.

Q But can you think of any examples, let's restrict ourselves to other countries for the moment in which an aboriginal people confronted by a dominant economic society surrounding them have met the problem of development in a creative and useful way so that we could look at that as an example of something that you at least think is a good start?

A No, I think in my presentation I'm suggesting that we should lead the way by looking at the principles that I have outlined in my submission, so we can give leadership to other parts of the world because the same problem that we're faced with in Canada is faced by other countries. You got to remember the, you know, in other countries as it relates to their indigenous people.

I think in Canada we do lead the way as far as Indian organizational development is concerned. I think other countries of the world are looking to other indigenous, oppressed indigenous groups of the world, are looking to the Canadian indigenous ability to give them some leadership. I am saying in my presentation I think we need the cooperation of the Canadian Government to give us a more meaningful constitutional participation or relationship in planning and developing this country, rather than keep us isolated.

There's no models in existence otherwise we wouldn't have made an effort to form a world organization. Everybody's searching and because I

Sanders, Manuel, Fumoleau
Cross-Exam by Scott

1 feel that the Canadian people Mr. Commissioner is
2 developing a tolerance and ^{the} generosity that is necessary
3 towards human rights. That the submission that I have
4 made will be heard by the Canadian people and that the
5 governments which I subscribe to and my membership sub-
6 scribes to, would consider other alternatives than they
7 are presently using to try to settle aboriginal rights,
8 to give us the kind of mechanism that will allow us to
9 develop equality within the framework of our own needs
10 and within our terms which is really not trying to dis-
11 possess you.

12 I think in my presentation I
13 said that our intention isn't to shoulder non- Indian
14 people in this country out of their constitutional
15 rights as a government which governs this country.

Manuel, Sanders, Fumoleau

Cross-Exam by Scott

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MR. SCOTT: That's all, thank

you.

THE COMMISSIONER: Any re-examination, Mr. Bell?

MR. BELL: No re-examination, sir.

THE COMMISSIONER: Thank you, Mr. Manuel.

(WITNESS MANUEL ASIDE)

THE COMMISSIONER: Is it time for coffee?

MR. BELL: I think it's ready, sir.

THE COMMISSIONER: All right, we'll adjourn for coffee then.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BELL: Mr. Commissioner, it appears that we are unfortunate victims of a combination of Easter holidays and P.W.A. schedules, and I therefore would like to call a witness out of order at this time, Mr. Harold Cardinal would ordinarily have appeared on our second panel this evening, but since he also has to catch a plane I've asked counsel to indulge us and let us call him out of order.

(WITNESSES ASIDE)

HAROLD CARDINAL, sworn:

DIRECT EXAMINATION BY MR. BELL:

Q Mr. Cardinal, you are the

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president of the Indian Association of Alberta?

A Yes, I am.

Q You're a member of the
Executive Council of the National Indian Brotherhood.

A Yes.

Q And a member of the Council
of trustees of the Institute for Research on Public
Policy.

A Yes.

Q And you are the author of
the "Unjust Society."

A Yes.

Q Would you please proceed
with your evidence?

A Mr. Commissioner, I first
want to take this opportunity to express my gratitude
to the Northwest Territories Indian Brotherhood for
their kind invitation for me to be here at your
hearings, and I wish as well to express my thanks to
you and your people for allowing me to appear as a
witness at your hearings. I agreed to accept the
kind invitation of the Northwest Territories Indian
Brotherhood because I have a number of concerns with
what is happening in the whole area of Indian claims
and the whole question of relationships between our
people, be they Dene, Cree or any other peoples, and
the larger society as represented by the Federal
Government.

I am concerned first of all
that as the question of Indian claims comes into conflict

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with the need for developmental projects by the larger society, and as the conflict intensifies, to the point where some decisions will be made, I am concerned that the emotions that will result -- because some feel they may have lost, and others win -- that in the long run this process is not going to be in the interests either of our people or of the country.

I wanted to re-emphasize, I think, part of the aspirations of our elders and our people when they entered into a treaty relationship with the British Crown, in terms of what they hope for their children and what they hope would happen in this country, in spite of the fact that there is a lot to criticize in the inadequacies of the treaty documents, there is still, I think, the principles, the aspirations that have to be considered and it is in this area that I hope we at this time and place will not lose sight of these hopes and aspirations.

I think Indians and white people have similar goals in terms of what they want to achieve for their children. There is no family, Indian or white, that does not want to see a better home, a better lifestyle, and more success for their children than perhaps they as parents experienced during the course of their lifetime.

I think it is common denominators at this level that we have to begin examining, and as we begin examining these in the context of the developmental needs of the industrial society as we have we have to begin considering some fairly basic items.

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I am concerned that we are allowing ourselves as Indian people, whether we live in the far north or in the southern part of the country, in the east or in the west, of getting caught up in rhetoric that will have no useful results either for our children or for other people as well, and perhaps it is with these concerns that I accepted the opportunity to be here.

One term^{that} has perhaps come into public focus in the past two years that has the potential of creating disharmony and disunity in this country. That is the term "nation", "nationhood" and "sovereignty". I wanted to deal with these terms from the point of view of traditional or tribal peoples. It is often very difficult when you speak the English language to be able to translate in a very precise way a lot of the terms that exist in English into tribal languages, be it Cree language or the Dene language, and when we begin looking at the term "nationhood" or the term "nation" what is it from our traditional point of view, what is it from the point of view of our elders that we are trying to express, and what kind of hopes and aspirations are inherent in those terms.

Our people have always been nations and they will always be nations. But the term "nationhood" is not used primarily in the nation state context as opposed between the American nation and the Canadian nation or the European nation. Our term "nationhood" in our language and based on the definition of our elders is basically one that relates

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1 to our world viewpoint of ourselves as a people and
2 our relationship to all things in the world from which
3 we come. We believe much like the Jewish people
4 believe, that we have a special relationship with our
5 Creator. We also believe that no secular or temporal
6 power has any right, nor the power nor the authority
7 nor the might to destroy or interfere in that relation-
8 ship; and because we believe that we have a special
9 relationship to our Creator, much like the Hebrew people
10 that believe that they -- and probably many other
11 religions, many other civilizations in the world -- we
12 begin then looking, and I think this is part of an
13 emerging definition of identity amongst Indian tribes
14 throughout North America, because this phenomenon is
15 not restricted to Canada, it is equally evident in the
16 United States, and I think we've found equal evidence of
17 it here in ^{all} parts of the country as well.

18 As we begin looking at our
19 definition of ourselves from that context, as a nation
20 who have a special responsibility and a special relation-
21 ship, we are in that process beginning to discover that
22 in looking to the future and perhaps for the first time
23 beginning to get a glimpse and an understanding of
24 ourselves as a people or as nations, we then have to
25 begin looking at the positive things that we must
26 search for in order to build our relationship or to
27 rebuild our special relationship, not only with our
28 Creator but with our environment and with ourselves as
29 people as well.

This country as it exists,

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exists because our elders saw a vision and perhaps for many in the rather cynical times that we live in perhaps an idealistic and perhaps an naive vision, but one that we believe in and that is one where we must create conditions in this country in order to allow our children to be able to live with one another, to be able to accept each other as human beings, to be able to work with one another as human beings so that the great riches and many blessings that this country has received from its Creator can be recognized.

The dreams of our elders do not foresee separate nations or a separation of peoples. The dreams of our elders and the dreams that are inherent in the treaty-making process is one that allows Canadians of all colors to be able to relate to one another as human beings in this people who have responsibilities not only to themselves but to this country as well. It is my hope as we begin to create, and hopefully we can succeed, in creating a new environment for discussions where we can begin looking at problems instead of addressing ourselves to phony issues, that we can begin to create the changes that are necessary so that our children will inherit a much better world and a much better environment than perhaps we had the opportunity to inherit.

The term "nationhood" means many things but perhaps there is one other word that should be examined by your Inquiry. There are many words that should be examined by your Inquiry, but principally one or two.

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1 The first is how does this
2 nation distribute its wealth and its resources? What is
3 the relationship that should exist in the sharing
4 context between the Indian people and the white people?
5 What kind of sharing formula should we arrive at as
6 Canadians that would satisfy the needs of our people,
7 that would satisfy the aspirations of our people? What
8 kind of sharing formula can we devise as Canadians living
9 here and now that will satisfy the interests and the
10 needs of the larger society as well?

11 That is, I think, the primary
12 question of Indian claims, whether they're based on the
13 Mackenzie Valley Pipeline or whether they're based on
14 the Athabasca Tar Sands in Alberta, or the hydro project
15 in Quebec, or the claims in British Columbia. That is
16 the question, I think, that Canadians have to answer
17 because there is no way this country can survive in the
18 long run as long as people are deprived of the basic
19 necessities to exist as decent human beings, so the
20 question is not do we own everything or do you own
21 everything? The question is how do we share what we
22 own as Canadians living in this land, and I think that
23 is the question that the Dene people, the northern
24 people are beginning to pose to others. Perhaps we
25 say we pose this as an Indian nation, as a people who
26 believe that they have a special relationship with the
27 Creator, as a people who believe that they have a
28 special relationship with their land, a feeling they
29 are never going to lose irrespective of what conclusions
30 take place in the next ten years or so.

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We have survived as a people, poor as we have been. We have survived for the last 100 years, and as long as we maintain our identity and our belief, we will continue to survive, no matter what conditions we face in the future. What we have is a unique opportunity to address ourselves to the question of how do we share the resources that this country has to offer to all of us who live off it?

The second question, and perhaps that is another term that you should examine that comes out of the Dene Declaration, that comes -- that is found in the term "nationhood", and that is control. How do we control our lives? To what extent do we balance off our own interests in terms of survival along with the interests of the larger society? What institutions must be society controlled in order to feel that it is worthy of being called the modern nation state? What kinds of controls can it give to people who live in this country, who have always lived in this country? Controls that will not threaten its self-definition of "nationhood".

There are many ways we can talk about control, and how this fits into the question of nationhood, because I think that is one of the basic questions that has to be answered. We can talk about creating mirage corporations that presumably give to people hundreds and millions of dollars, or presumably give to people certain control. We can talk about structures; we can talk about the material things. But that discussion is going to be in a vacuum unless

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1 we as Canadians are prepared to address ourselves
2 directly to the question of control. We as a people,
3 we as a nation have the right to control our educational,
4 the education of our children. What does that mean?
5 Upon what basis do we make that claim as a people? If
6 you look at elders, as you probably have seen on your
7 visits to the communities in the Northwest Territories
8 they are the custodians of our knowledge. They are our
9 teachers because they have gone through life. They have
10 brought with them experience. They have gained experience.
11 They have gained knowledge that is going to be needed and
12 necessary for young people to survive, for the younger
13 generation to survive in this land, on any part of
14 this land whether we're talking about Eastern Canada,
15 Western Canada, or Central Canada, our elders possess
16 that knowledge.

17 How is it then that your
18 society and on what basis does your society state that
19 the education of our children can only be accomplished
20 when you have an education degree from a university?
21 On what basis and what is the legitimacy of that
22 claim that your society has? If we can begin to talk
23 about who has the responsibility to educate our
24 children, and if we can talk about the knowledge, the
25 resources that both societies have to offer, and that
26 basically in the end our people have to have full
27 control over the education of our children, we may not
28 be dealing with the acute problem of dropout rates that
29 we are coping with today in our province where the
30 educational system of the Provincial Government insists

H. C cardinal
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1 that it is given the jurisdictional power to control the
2 education of all people, including Indians. For the
3 last 10-15 years and even for the last 20 years their
4 systems have been educating our children, and the results
5 have been atrocious, and I think you will see the
6 statistics from Mr. Manuel's presentation.

7
8 We are beginning to find in
9 Indian controlled educational facilities in our province
10 that the dropout rate that the regular system is exper-
11 iencing is not happening in those systems. I think as
12 we begin to look at control of the key facets that
13 we have to have as human beings and that we have to have
14 as communities, perhaps then the question of claims and
15 how we share in distribute resources in this country
16 can begin to take some focus so that we're not screaming
17 at each other with various isms, as the Gospel reply
18 to whatever prejudices we may have as human beings.

19 If it's necessary for us to
20 look at this and necessary for people, white people
21 and Indian people, to understand that the nations that
22 existed amongst the Indian people prior to the coming
23 of the white man are in one hell of a shakey position
24 at this time because they have faced a society that
25 outlawed a lot of their basic institutions, and in this
26 area our task now is to rebuild those institutions
27 we have so that we can begin addressing ourselves to
28 basic problems like how do we handle the problems that
29 our people face with alcoholism? What kind of answers
30 do we have? Can we find amongst our people, among the
keepers of our knowledge, the elders of the various

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1 tribes in this country? If we find the answers to that,
2 if we are allowed to have control so that we can search
3 and devise the answers to that, is that going to be
4 perceived as a threat by the Canadian nation state or
5 members of the larger society? If we can succeed in
6 having control of our educational institutions where
7 we have a 90% attendance rate instead of a 90% dropout
8 rate, is that going to be such a threat to the security
9 of this country? Yet there are many institutions who
10 see the control of our people of these basic things
11 that we need for our survival as being a threat to their
12 existence, but perhaps the Commission and the people
13 who examine the reasons why or why not the pipeline
14 should be built should be looking at this, at exactly
15 who is threatened by what, and is that a real threat
16 to the country, and will it benefit or downgrade the
17 interests of the country in the long run?

18 Look at economic development.

19 If we talk about resources that can be given to the
20 Dene people as a result of a sharing agreement in the
21 north between them and the Canadian Government, is it
22 such a threat to Canadian society to have instead of
23 an 80% unemployed work force to have an 80% producing
24 work force in the north or in any part of the country?
25 That is, I think, one of the basic, one of the basic
26 reasons for Indian claims gaining prominence in this
27 country, the question of how we share resources and
28 what institutions we have to control in order to beat
29 back the problems of poverty that engulf our people.

30 There is no such thing as

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1 an Indian problem. Our problem is a poverty problem,
2 and there are ways, there are models that we have
3 found as we have tried to examine the alternatives to
4 our situation. We have found models among the
5 Chicanos, amongst the black people in the United States,
6 successful models^{that have} succeeded in helping poor people leave
7 that state of dependence on everyone else and become
8 producing independent members of society.

9 I think this is in essence the
10 meaning of Indian nationhood. We have to be allowed at one
11 level to maintain our relationship with our Creator;
12 but how different is that from the freedom of religion
13 rights that are inherent in the Canadian Bill of Rights
14 that are guaranteed perhaps in the Constitution? They
15 are certainly recognized as a necessary part of
16 Canadian life, and civilized life anywhere.

17 When we talk about nationhood,
18 the need for us to begin solving our own problems and
19 to have control over the resources, how different is
20 that from the guarantees for employment that are
21 contained in the Canadian Bill of Rights?

22 What process do we have to
23 go through to bring out the conflict that exists in
24 this country? It is not between the Dene nation and
25 the Federal Government. It is not between the Cree nation
26 and the Federal Government. The conflict that exists
27 is in terms of interest groups that have built up within
28 the bureaucracies of both levels of government, and
29 within the bureaucracies of universities, within the
30 bureaucracies of industry and labor unions, each of
whom want control over their perceived area of jurisdiction.

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In Chief

1 The claims give to the Indian
2 people an opportunity to assure their right that
3 universities, that departments of education that
4 labor unions assured through other forms of bargaining
5 process. If Canadian society cannot see the validity
6 of the use of development as an instrument for negotiat-
7 ing on these questions, then what kind of legitimate
8 alternatives are you leaving for Indian people upon
9 which to negotiate for their survival for their role
10 in this country?

11 If, for example, we talked
12 about in the few years ahead into the future about some
13 possible agreement between the Dene nation and the
14 Federal Government, what kind of agreement are we talking
15 about? Who would be the first to say that the Northwest
16 Territories Indian Brotherhood does not represent the
17 Indian people or the native people of the Northwest
18 Territories, and therefore cannot be given control of
19 the resources that will result from the claims; that
20 the control has to be placed somewhere else.

21 If that process is allowed to
22 happen, if each of the existing self-interest groups
23 in this country are allowed to keep their total control
24 over the lives of Indian people then the process of
25 Indian claims would have been for nothing and I think
26 what I hope we can do as a people, whether we are Indian
27 or white in this country, that we can take the opportunity
28 that the claims process is bringing about to begin
29 addressing ourselves to some pretty basic questions that
30 will affect the well-being of our children in the future.

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I wanted to bring, in my
comments today Mr. Commissioner these thoughts, these
perspectives, because I am concerned if we allow a
situation to develop where our people say nation on
one hand, and the Federal Government responds separatist,
what kind of environment are we creating, and will it
ever be possible in that environment to do the work that
we have to do as Canadians if we are going to leave for
our children a better future and a better way of life?

THE COMMISSIONER: Thank you
very much.

MR. SCOTT: Mr. Carter or --
I'm sorry, Mr. Carter?

MR. CARTER: I have no questions.

MR. SCOTT: Mr. Hollingworth?

MR. HOLLINGWORTH: I don't
expect I have any questions sir. I didn't receive
a text of this and not being critical of Mr. Bell, it's
a very thoughtful speech and I'd like to give some thought
to it. I don't expect to have any questions.

MR. SCOTT: Mr. Bayly?

MR. BAYLY: I have no questions
sir.

MR. SCOTT: Mr. Sigler?

MR. SIGLER: I agree that it's
a very thoughtful speech. I have no questions on it.

MR. BELL: I'm sure Mr.
Commissioner that if counsel thinks of some questions
later on, we would be happy to have Mr. Cardinal back.

MR. SCOTT: Well, you're not

H. Cardinal
Cross-Exam by Scott

1 going to deprive of my chance are you?

4 MR. BELL : No sir.
CROSS-EXAMINATION BY MR. SCOTT:

5 Q Mr. Cardinal,

4 you -- in dealing with the question of control you
5 discussed first the desirability I think you'd put it
6 I think, of control of the educational process, and I
7 understand that in Alberta some measure of control has
8 been obtained by native people over parts of the
9 educational process. I wonder if you could tell us
10 first of all whether I am right about that? What
11 measure of control exists and what lessons, if any, we
12 can learn from what's happened so far?

13 A Well, I think the control
14 that I talked about is in an all inclusive context.
15 Let me respond to your question on the educational
16 control aspect. Depending on who you talk to in Alberta,
17 you will find that there is no agreement on whether
18 in fact there is control over the education of Indian
19 people in the province of Alberta. The Federal Govern-
20 ment will assure ^{you} that Indian control of Indian education
21 is a successful program and I will tell you the opposite,
22 that it is non-existent in our province.

23 I say non-existent from this
24 point of view. When we talk about the problems that
25 we have to overcome in education, there are many, many
26 facets, many levels at which we talk, but the one thing
27 that our people need is to be able to sit down and
28 assess and even perhaps for the first time sit down and
29 define what is education? What are educational
30 facilities? Is this our education as a people or is that

H. Cardinal
Cross-Exam by Scott

1 someone else's? If it is someone else's what can we
2 do to modify it so it becomes our own, if we can modify
3 it?

4 Then from that process they
5 have to set their priorities and when they begin
6 setting their priorities about what they want to do
7 then they begin costing and mapping out the structures
8 that are going to be needed to implement not only
9 their objective, but as well the hopes and aspirations
10 they have in that field. If you take that process, the
11 opportunity for that happening in Alberta or anywhere in
12 Canada by Indian people is non-existent. What Indian
13 people have been allowed to do over the past few years
14 is administer programs on behalf of the Federal Govern-
15 ment, programs that have fairly strict guidelines that
16 stipulate how monies will be used, for what purposes
17 and where the emphasis will be.

18 Perhaps that is one step
19 in the right direction but from our perspective, it is
20 not Indian control of Indian education.

21 I think to a certain degree
22 there has been allowed in some communities the location
23 of schools on reserves where parents and communities
24 have a lot more to do with the schools than they have
25 in the past, and where those variables are introduced,
26 the results of the educational -- to date has been --
27 I think has been surprising to educators in our province
28 because a drop-out rate doesn't exist.
29 I don't know if I have answered
30 your question.

H. Cardinal
Cross-Exam by Scott

Q Well, are these educational programs that you're -- that are run by the Federal Government and that are now being administered by native organizations, are they administered by the Alberta Brotherhood?

A No, the educational programs basically are administered at the community level by the band councils or the reserves where some agreement has been reached between the band and the Federal Government.

Q Yes, I see and does the Alberta Brotherhood play a role in developing those agreements in bringing the Federal Government and the band councils together?

A That role I think is evolving. It's basically one where we are giving advice to the Indian people in terms of what things they have to be on the lookout for in terms of their agreements with the Department of Indian Affairs. There's a lot of unresolved issues especially on the treaty right to education of Indian people that are still outstanding between our people and the Federal Government.

Q Well now you've made a case for the importance of some kind of control and have illustrated it as I understand it by two examples, at least two examples; one education and secondly, industrial development. What other areas do you think are critical in terms of obtaining control?

A I think there are --

Q -- in the sense you use it:

H. Cardinal
Cross-Exam by Scott

1 A I think there are two
2 areas. One is the control in the economic development
3 field. Another is the control of the governmental
4 structures as a people so that they can have their
5 leadership whether it's at the provincial or local
6 level. That is, responsive to them and not to outside
7 funding agencies. I think it's crucial that control
8 be procured by Indian people in at least these areas.

9 Q Well, in Alberta for
10 example and recognizing that this is just a program
11 that you have in mind and nothing may have happened
12 about it yet, do you contemplate within the province
13 of Alberta for example a kind of parallel municipal
14 control mechanism. What have you thought about that?

15 A Well, I think we have a
16 different viewpoint perhaps of the parallels to the
17 municipal bodies as one that we do not agree with.
18 We feel that the British North America Act which gives
19 to the Federal Government responsibility for
20 Indians and Indian lands that this provides within it
21 the basis or the reasons for the existence of the
22 Indian Act, because the Indian Act exists whether we like
23 it or not. That's a different issue, but the existence
24 of that piece of legislation from our point of view
25 should be adequate to create for us control in the number
26 of areas parallel to the type of control that provincial
27 governments have, parallel to the type of control that
28 French Canada has in Quebec.

29 Q Well, apart from economic
30 development and education and maybe there aren't any other

H. Cardinal
Cross-Exam by Scott
Sanders & Fumoleau
In Chief

1 areas now that I think of it. But, apart from those
2 two areas, are there any other areas that you can pin-
3 point as being of critical importance?

4 A I think the governmental
5 area is one.

6 Q Yes.

7 A Well, economic development
8 covers I think the broad range, but those are three that
9 I can think of immediately. There are probably more.

10 MR. SCOTT: Yes. Thank you
11 Mr. Cardinal. Those are all the questions I have Mr.
12 Commissioner.

13 (WITNESS ASIDE)

14 DOUGLAS E. SANDERS,
15 FATHER RENE FUMOLEAU, resumed
16 DIRECT EXAMINATION BY MR. BELL (CONTINUED)

17 Q Reverting to the
18 normal order, our next witness is Father Fumoleau.

19 WITNESS FUMOLEAU: Before I
20 start this presentation I would like to say just a few
21 words. I would like to dedicate this presentation to
22 the four people who were shot in Yellowknife yesterday
23 as the day when phase four started and the social impact
24 and exploitation of northern resources.

25 I think it is very significant
26 for me that these four people were shot yesterday. They
27 were not shot by a killer. I think they were victims
28 of the so-called development that took place in Yellow-
29 knife in the past 30 or 40 years which created miserable
30 and unjust conditions for the poor people of this
31 district. So, I would like to dedict this presentation
to the old man Pierre Rib, 84 years old and to the three

Sanders, Fumoleau
In Chief

1 teenagers who were shot yesterday, victims of some
2 people's greed for gold, money and power.

3 Mr. Commissioner, a few months
4 before the signing of the Indian Treaty #8 in 1899,
5 the treaty was explained to the Canadian public in the
6 following way:

7 (QUALIFICATIONS AND EVIDENCE OF HAROLD CARDINAL
8 MARKED EXHIBIT #565)

9 (QUALIFICATION AND EVIDENCE OF FATHER RENE FUMOLEAU
10 MARKED EXHIBIT #566)

11 ("AS LONG AS THIS LAND SHALL LAST", RENE FUMOLEAU
12 O.M.I. MARKED EXHIBIT #567)

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Sanders & Fumoleau
In Chief

1 "With the march of civilization northward,
2 necessity has arisen for negotiating treaties
3 with the scattered inhabitants of this
4 Territory -- Little is known of the northern
5 Indians ... as they have never been subject
6 to government control and have remained
7 practically without the pale of civilization...
8 it is expected that the treaty Commissioners
9 will bring back not only a satisfactory treaty
10 but much information about this part of Canada."

11 It was a strange mission indeed.

12 The treaty Commissioners went to an unknown country to
13 meet unknown people living in an unknown civilization,
14 and speaking languages unknown to them. It is an under-
15 statement to say that neither the Commissioners nor the
16 Indians had a clear idea of what the treaty was
17 supposed to achieve. In the political and economic
18 development of the Mackenzie District, such uncertainties
19 have been the rule and not the exception. If the
20 Dene and the non-Dene of 1976 know a little about each
21 other, most still ignore their history, as much as I
22 did myself before I started some research five years
23 ago on the relations between the Dene of the Mackenzie
24 Valley, the Federal Government, and the Territorial
25 Government during the period 1870 to 1939. I would like
26 to share with you some of the knowledge I acquired while
27 writing the book, "As Long as This Land Shall Last."

28 During the first year of your
29 Inquiry, you heard people voice their feelings about
treaties, settlements, rights and responsibilities, land

Sanders & Fumoleau
In Chief

1 rights and promises for the future. All these ideas
2 and events are not new to the Northwest Territories.
3 Exploitation of northern resources and political changes
4 here have followed some patterns which enable us to
5 understand the present situations. History challenges
6 us to correct the mistakes of the past century, or at
7 least not to repeat them on a larger scale.

8 This section is:

9 "Young Canada and Old Northwest 1870 to 1897."

10 In 1870 the Hudson's Bay
11 Company surrendered its trading monopoly in the north-
12 west. This brought under the control of the young
13 Canadian Government a vast territory which comprised
14 all of Alberta and Saskatchewan, most of Manitoba,
15 two-thirds of the present-day Ontario and Quebec, includ-
16 ing what is now mainland Newfoundland, the Yukon Terri-
17 tory and the area which is known today as the Northwest
18 Territories.

19 The Lieutenant-Governor of
20 the Northwest Territories was instructed to establish
21 friendly relations with the Indians to the north and
22 west, and to ascertain the best way, whether by treaty
23 or otherwise, for the removal of any obstructions to the
24 flow of population into the fertile lands between
25 Manitoba and the Rocky Mountains. These 1870 instructions
26 show the ultimate goal of all Indian Treaties:

27 "The removal of obstructions"

28 to settlement and to the exploitation of resources.

29 The removal of the Indians having been effected by the
30 first treaties, the Dominion Lands Act of 1872, gave 160

Sanders & Fumoleau
In Chief

1 acres of free land to any non-Indian who would
2 settle on the land. North of the prairies, the land was
3 not suitable for farming or ranching; treaties could
4 wait.

5 If the fur trade had disrupted
6 the 15,000-year-old way of life of the Athabasca-
7 Mackenzie Indians, the traders had also assisted the
8 Indians in time of need. After 1870 the Hudson's Bay
9 Company argued that the Canadian Government must assume
10 responsibilities for the Northwest Territories and for
11 its native people. However, Ottawa policy was clear:

- 12 1. No help to the Northern Indians because they have
13 not signed any treaty.
14 2. No treaty with the Northern Indians because their
15 territory was not required for white settlers.
16 3. No interest in the Indians until their lands could
17 be exploited.

18 The government's policy did
19 not escape public criticism. Newspapers printed that
20 it was a fearful thing that any community under Canadian
21 rule should perish for lack of assistance that it is
22 possible to render. This is a quote from the
23 "Calgary Tribune" of February 5, 1887:

24 "It is not a duty that we owe to the Indians
25 as much as one that we owe to ourselves and
26 to humanity in general."

27 This policy of,
28 "No settlement, no treaty, no help"
29 lasted until 1888 when government surveyors reported
30 that "the possible oil country along the Mackenzie

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In Chief

1 Valley was seen to be almost co-extensive
2 with that of the valley itself."

3 Its remoteness would certainly delay its exploitation
4 but,

5 "the oil fields of Pennsylvania and at Baku
6 were already showing signs of exhaustion, and
7 as they decline, the oil field of Northern Canada
8 would have a corresponding rise in value,"
9 said the report.

10 A report of a Select Committee
11 of the Senate on the Mackenzie District is as accurate
12 in March 1976 as it was when it was written in March
13 1888.

14 "The petroleum area is so extensive as to
15 justify the belief that eventually it will
16 supply the larger part of this continent
17 and be shipped from Churchill or some northern
18 Hudson Bay port to England.

19 The evidence points to the existence of the
20 most extensive petroleum field in America, if
21 not in the world. The uses of petroleum and
22 consequently the demand for it by all nations
23 are increasing at such a rapid ratio that it
24 is probable this great petroleum field will
25 assume an enormous value in the near future and
26 will rank among the chief assets comprised in
27 the Crown domain of the Dominion."

28 A Privy Council Report of
29 1891 set forth clearly the new intentions and expecta-
30 tions of the government:

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In Chief

1 "The discovery of immense quantities of petroleum
2 ... render it advisable that a treaty or treaties
3 should be made with the Indians who claim those
4 regions as their hunting grounds, with a view
5 to the extinguishment of the Indian title in
6 such portions of the same, as it may be con-
7 sidered in the interest of the public to open up
8 for settlement."

9 However, political problems
10 and the impossibility of exporting the northern oil
11 caused Ottawa to forget the north and its Indians once
12 more, until the Klondike Gold Rush focused public
13 attention again on the northern opportunities. A few
14 hundred prospectors drifted down the Athabasca and the
15 Mackenzie Rivers to reach the Klondike. Reports of the
16 time indicate that they showed no respect for the Indians
17 and their way of life (which is not unusual with
18 transient people). Thus far the northern Indians:

19 "had been shielded from the corrupting influences
20 that too often accompany the advance of
21 European civilization."

22 Venereal diseases were introduced for the first time
23 to the Northwest Territories.

24 "Drunkenness, immorality and every other
25 accompanying vice peculiar to modern civiliza-
26 tion are daily on the increase."

27 Some prospectors turned
28 trappers, and disrupted the Indians' economy by the use
29 of poison baits. As the first police patrol ever to
30 reach Great Slave Lake reported in 1897, Indians found

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In Chief

it hard that,

"people who are not owners of the country are
allowed to rob them of their living."

While nothing was done for the
preservation of the Indians, royal assent was given in
1894 to an Act for the preservation of game in the
Northwest Territories. Sportsmen in search of trophies
were allowed to shoot buffalo and muskoxen, while
Indians were prohibited to shoot buffalo for food.

This section is,

"Ottawa Prepares for Treaty No. 8."

White prospectors and the
consequences of their presence led the government to
consider signing a treaty with the Indians,

"for their rights over this territory".

It would be easier

"to deal with them now than when their country
is overrun with prospectors and valuable mines
are discovered. They would then place a higher
value on their rights..."

However, Ottawa considered the treaty should not
include the area inhabited by the Indians about the
Great Bear Lake and along the Mackenzie River, for the
reason:

"their territory ...is of no particular value
and they very rarely come into contact with
whites."

In 1899, the year when Treaty
8 was signed, the Deputy Superintendent of Indian Affairs
wrote about one Indian:

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In Chief

"This man is from Great Slave Lake, a section of the country inhabited by Indians with whom no treaty has as yet been made and which is not yet in touch with civilization, and... he can therefore hardly be regarded otherwise than as an untutored savage ... governed by superstitions, and whose habits are entirely opposed to those of civilization."

Thus he should be treated,

"in a manner ... accorded a child below the age of 14 years, concerning whom there is a prima facie presumption that he does not understand the nature and consequences of his act. Even the most highly educated Indian until enfranchised is subject to civil disabilities... Whatever his actual age, he is still an infant in the eyes of the law."

Sanders, Fumoleau
In Chief

The text of Treaty 8 is a lengthy legalistic document, written in a language unknown to the 1899 Indians. If the argument of the Department of Indian Affairs would be applied to Treaty 8, it seems hardly likely that the 14 year old untutored savages of the north should have been asked to bind themselves legally by a treaty in the first place, much less to be responsible for its legal consequences on future generations of Indians.

This section is about Treaty 8 negotiations, 1899 and 1900. Treaty 8 was signed in Northern Alberta and in Fort Smith in 1899. It was offered to the Indians in Fort Resolution, N.W.T., in 1900. It appears that the negotiations lasted only during one afternoon, hardly time enough to explain the legal and social implications of such an agreement.

Three conclusions can be reached from all available documents:

1. The Indians and the Treaty commissioner did not understand each other.
2. The Indians considered the treaty to be only a treaty of friendship.
3. The Indians were only interested in retaining their way of life, their hunting, trapping and fishing rights.

Joseph Abel and Pierre Michel recall the words of Chief Drygeese at the Treaty negotiations:

"This money never happened before, so we want to know if something will be changed later. If it

Sanders, Fumoleau
In Chief

1 is going to change, if you want to change our
2 lives, then it is no use taking treaty, because
3 without treaty we are making a living for
4 ourselves and our families ... There will
5 be no closed season on our land. There will
6 be nothing said about the land... My people
7 will continue to live as they were before
8 and no white man will change that. The people
9 are happy as they are. If you try to change
10 their ways of life by treaty, you will destroy
11 their happiness. There will be bitter struggle
12 between your people and my people."

13 The haste of the Treaty
14 Commissioner in securing Indian signatures on a piece
15 of paper removes any illusions that the Treaty was a
16 contract signed by equal partners. How to characterize
17 it remains a question, but the fact remains that
18 government officials in Ottawa, who drafted the terms
19 of the Treaty, had little knowledge or comprehension
20 of Indians or their way of life in the northwest.

21 The Treaty was seen by
22 the Indians as a friendship pact, which would permit some
23 amount of peaceful settlement of the country; land
24 surrender or relinquishment of title were no issues for
25 them. However, there were certain basic assurances
26 which they wanted from the government: freedom to hunt,
27 trap, fish and move freely. When promises were given
28 that these would be protected, the Indians accepted
29 government assistance, satisfied that their livelihood
30 and that of their children would not be endangered.

Sanders, Fumoleau
In Chief

1 Expedient answers and facile promises were the substance
2 of these Treaty negotiations.

3 In the next section, we
4 consider the years between Treaty 8 and Treaty 11
5 in 1900 to 1920.

6 The main advantage of
7 the Treaty to the Indians was the distribution of
8 the \$5.00 annuity and of some ammunition.

9 Gerald Card was the first
10 Indian agent at Fort Simpson. The agency had been
11 planned without consultation with the Indians and when
12 Card arrived at Fort Simpson with 2 horses, 4 oxen,
13 and 10 tons of implements and supplies, on July 2, 1911,
14 the Indians refused to shake hands with him "as they
15 thought he had come to take their country away from
16 them. A considerable number seemed to be suspicious
17 of the good intentions of the government in placing
18 the demonstration farm in what they termed their country."

19 In 1920 there were still
20 only two civil servants in the Northwest Territories:
21 Card and Thomas (Flynn) Harris. The promises of medical
22 care made at treaty time couldn't by themselves improve
23 the health of the Indians. Indian Affairs inspector
24 Conroy commented in 1913:

25 "It is a physical impossibility for Dr.

26 MacDonald stationed at Fort Smith, to visit
27 with any degree of frequency such posts as
28 Fort McMurray, Fort Chipewyan, Fond du Lac,
29 Fort Resolution, Hay River, Fort Providence,
30 Fort Simpson, Fort Wrigley, Fort Norman and
Fort Good Hope."

Sanders, Fumoleau
In Chief

1 The distance between Fort McMurray and Fort Good Hope
2 is 1,330 miles by water.

3
4 After the gold rush had
5 passed through the Athabasca-Mackenzie District, some
6 white trappers and free traders moved into the country.
7 This new breed broke the monopoly of the Hudson's Bay
8 Company and altered the nature of the fur trade. Fierce
9 competition for furs caused intensive and reckless
10 trapping in some areas. Speculation and high prices
11 encouraged unscrupulous trading practices. Northern
12 game and fur became increasingly scarce as the government
13 was unable or unwilling to protect the Indian people and
14 their economy.

15
16 Against the promises made
17 at Treaty time, restrictions were imposed unjustly on
18 Northern Indians. One being the "1917 Act regarding
19 game in the Northwest Territories of Canada", another the
20 "1918 Regulations for the protection of game", another
21 one the "Convention for the Protection of Migratory Birds
22 in Canada and the United States". Basically it
23 restricted the Indians to hunt for food so that American
24 sportsmen could destroy game for fun. All this was, of
25 course, for the common good of the majority.

26
27 For a few years in Fort
28 Smith, the discussion centered on who would be allowed
29 in the Salt Plains: the buffaloes, the Indians, or the
30 white settlers. Although the Department of Indian Affairs
31 protested that "the rights of the Indians under their
32 Treaty should receive some consideration", the Indians
33 lost.

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In Chief

The problems arising from unaccustomed game laws and from the competition of white trappers were the subject of annual complaints at treaty time. Finally, the Indians decided to boycott the 1920 Treaty days in Fort Resolution. Then Chief Drygeese told the Indian Agent:

"Do you remember what you promised us before? Why do you change now? ... You gave us money and paper, now you want to change the law. We will give you back all the money. You can't pay to be the boss of us...Why do you tell us how to run our land? We did not give it to you... All my people will claim this land as their own and it will not be taken away from them."

These are the words of Chief Drygeese.

Every year after 1907 Conroy, the inspector for Treaty 8, recommended that the Treaty 8 should be extended further north as a benefit to the Mackenzie River Indians. These Indians themselves looked to the government as to a possible source of assistance and relief during hard times. They must also have recognized the need for government protection as some southerners began to move into their land. However, officials of the Department of Indian Affairs replied:

"It is a question of doubtful utility whether treaties should be made in this far northern district... There is no necessity for taking that action. The influx of miners and prospectors

Fumoleau, Sanders
In Chief

into that country is very small, and at present there is no settlers."

Canada was not very concerned about the Northern Indians because "many people believed that the Indian problem would solve itself out." The expected solution was the gradual disappearance of the Indians themselves. Over a long period -- most of the 19th century -- their number was reduced from what was estimated by some authorities to be 13,000 to one-third of that total. Census figures of the Department of Indian Affairs for the Northwest Territories indicated 5,262 Indians in 1913, and only 3,764 in 1919. That is a diminution of about 1,500 in six years.

The next section is about the discovery of oil in the Northwest Territories in 1920. From the time of the Klondike gold rush, prospectors penetrated the Mackenzie District but mineral resources were still unexploited in 1920. It was on Indian territory, unsurrendered by any treaty, that the first oil gusher at Norman Wells came in on August 25, 1920, revealing the underground treasure of the Northwest Territories. In the provinces the event was described with superlatives: "Biggest oil field in the world -- The district to be punched full of producing wells is 600 miles wide and nobody knows how long." The construction cost of a pipeline to carry the oil to southern markets was estimated at 55 million dollars.

The Territorial Government emerged. An Act establishing the government of the

Sanders, Fumoleau
in Chief

1 Northwest Territories was passed by Parliament in 1905.
2 In 1920, no councillors had yet been named nor a terri-
3 torial administration established. With the discovery
4 of oil and the presence of more and more white people in
5 the Mackenzie District, the Territorial Government began
6 to take shape. With four newly named councillors, the
7 first session of the Northwest Territories Council
8 was held on April 28, 1921. Oil and gas were the main
9 items on the agenda. A complete staff was organized for
10 service both in Ottawa and in the Mackenzie District. The
11 first territorial administration headquarters were
12 opened in Fort Smith in 1921 with a 22-man staff.
13 Duties of the new administration included inspecting
14 the oil well and studying the suitability of the
15 country for the installation of the pipeline.

16 A lengthy memorandum from
17 the Commissioner of the Northwest Territories office
18 on May 12, 1921, dealt with matter concerning the well-
19 being of the 150 white residents of the Northwest
20 Territories and future settlers. Not one word of the memo
21 made any reference to the 3,500 Indian people of the
22 district although these regulations, plans and
23 administrative details affected an area which was still
24 Indian territory.

25 Neither the necessity for
26 a treaty, nor the possibility that an Indian should refuse
27 one, was ever considered by the Territorial administration.
28 It was as though the Indians had ceased to exist in the
29 Mackenzie District, with no rights in the past, no
30 claims in the future. The fact that the Federal Government

Sanders, Fumoleau
In Chief

1 signed a treaty with the Indians a few months later
2
3 did not affect territorial plans. The administration
4
5 persisted in its convenient illusion.
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The next section is on the preparation of Treaty 11. The politicians in Ottawa viewed the oil discovery as an event of national significance. The economic implications for Canada were staggering. Some quotes from the Hansard:

"It would be a splendid thing if we had a territory as well populated and as far developed as Alaska from which we could draw great natural products. The first great wealth of that country to be developed will be its mineral wealth. The potentialities of mineral wealth in this great north country are almost beyond belief. The eyes of the mineral operators are upon us today."

However, the excessive power of the oil companies were also questioned in Ottawa. "If the Imperial Oil Company, the big child of the Standard Oil Company puts in a pipeline, you will not see cheaper oil. A railway must be built or some method of transporation provided."

Obviously, the Canadian Government could no longer remain indifferent to the north. The stakes were too great. The first step was to secure ownership of this vast domain of country rich in natural resources and favorable for development. The question of jurisdiction was raised by Conroy who wrote:

"The Indian title has not yet been extinguished with respect to the entire country north of Great Slave Lake and it would be desirable to take a surrender of this territory from the northern

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chiefs as soon as possible in order to avoid complications with respect to the exploitation of the country for oil...

The recent discoveries of oil at Norman have been made on lands virtually belonging to those tribes. Until treaty has been made with them, the rights of the Government Mining Lands and Yukon Branch to dispose of these oil resources is open to debate...

Already lands which might, with great advantage, have been claimed by Indians have been secured by whites. During the past, year by year, little by little, the rights of the Indians have been encroached upon. The rapid and unprecedented encroachment of white people means that the Indians, unless protected, will be robbed of their fair share of the best land. It must be taken into consideration that the aboriginal owners are entitled to their shares of oil bearing lands as well as agricultural lands."

The Superintendent General of Indian Affairs agreed that no time should be lost to "follow the usual policy and obtain from the Indians cession of their aboriginal title and thereby bring them into closer relation with the government and establish securely their legal position." James Wah-Shee summed up accurately the reason behind Treaty 11:

"The treaty was signed when it was discovered that our land was more valuable than our friendship."

The next section is about Treaty

Sanders, Fumoleau
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11 signed 1921. In Ottawa, Henry Conroy was chosen to "negotiate" Treaty 11 with the Mackenzie Indians. It is difficult to figure what negotiation could take place as he was handed the text of the Treaty already all prepared, and he was reminded that he should make no other promises. During the summer of 1921, the Treaty Commission travelled from Fort Providence to Fort McPherson and also to Fort Rae and in 1922, Treaty 11 was presented to the Fort Liard Indians.

Official documents show that the Government in 1921 viewed Treaty 11 as a mere formality. Nor is there evidence that the government ever developed a clear policy of fulfilling its obligations to the Indian people.

The events surrounding the signing of Treaty 11 will be subject to various interpretation depending on the cultural context in which they are viewed. The intent and purposes of government officials, in making treaty with the Indians might have been understood by their countrymen both then and now. This would not necessarily be the case for the Indian people. For their part, the Indians never fully realized the extent of their participation in the Treaty, what they were expected to give and what they were entitled to receive.

Suspicion, apprehension and reluctance characterized the manner in which most Indians approached the Treaty negotiations. Some had sworn that they would never accept treaty money. Many sensed that they were on the threshold of an unknown

Sanders, Fumoleau
In Chief

1 future and they were afraid, but in the end they all
2 took the money. They understood from Conroy that whether
3 they took treaty or not, they were subject to the laws
4 of the Dominion although they did not willingly accept
5 the Government of Canada. They had nothing to gain by
6 refusing. Nevertheless, the Indians did not accept the
7 treaty in toto as it was offered. They tried to secure
8 for themselves some benefits which were not included in
9 the original text prepared in Ottawa.

10 They tried to bargain within
11 the narrow limits allowed them. Later, when government
12 promises were not kept, some attempted to refuse their
13 treaty money but learned that a treaty was not re-
14 negotiable. Whether they accepted or refused the annuity,
15 Treaty regulations were still valid, they could never
16 turn back.

17 Basic to all misunderstandings
18 is the notion of "land." No more in 1976 than in 1921 have
19 the words of the treaty the same critical meaning for the
20 Indian people as for the people who wrote them. The
21 Indian did not see himself as owner of land nor as em-
22 powered to bestow ownership on another. He considered
23 that the land and its animals, the water and its fish
24 were for his use.

25 He would never refuse to share
26 them, compelled by conviction to do so. Nor did he
27 consider that the act of sharing deprived him of his
28 own right to freely use the land as he had previously
29 done. This attitude was rooted in experience and culture,
30 his only basis for understanding the Treaty.

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In Chief

Besides a five dollar annuity and some ration, Treaty 11 offered the Indian people some reserves. These were never established and compared to the land which the Hudsons Bay Company was allowed to retain when surrendering only a trading monopoly, the promised Indian reserves appear to be quite insignificant.

The Treaty negotiations included vague promises of medical care and of education. 23 years after the signing of the Treaty in 1944, there were 3,854 Indians in the Northwest Territories in an area of half a million square miles. The budget of Indian Affairs for their education was \$37,566 and for their medical care, \$36,838.

In 1921 as well as in 1899 and 1900, the Indians were interested mostly in retaining their way of life. Contrary to the order from Ottawa that he should make no outside promises but strictly follow the Treaty text, Conroy did promise the Indian people that they would be guaranteed full freedom to hunt, trap and fish in the Northwest Territories if they would sign the Treaty. He made this oral commitment when it became clear that there would be no treaty if this right was not recognized and assurance given that it would be respected forever.

The Treaty itself had changed the Indian way of life very little but its signing was linked to many events of the 1920, 1921 in the Mackenzie District.

- the discovery of oil at Norman Wells

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In Chief

- the collapse of the fur market
- the first bank established in the Northwest Territories
- the first large steamers, gas boats and oil burning vessels on the Mackenzie River
- the first trucks and tractors in the Northwest Territories
- the railway from Edmonton to Fort McMurray
- the first airplane flight in the Northwest Territories
- the first trial by jury
- the establishment of a Territorial Administration
- the naming of the first members of Council
- the first ordinance by the Commissioner
- and a Commissioner's first visit to the Northwest Territories.

The main problem then and for the future was not Treaty 11 but that the Indians had no part whatsoever in any of these events which altered so much their economic and political structures and shook drastically their cultural foundations.

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I will now mention,

"The Years After the Signing of Treaty 11."

The prospect of wealth in oil, minerals or fur lured adventurers north to explore this virgin country. These prospectors-cum-trappers offered the single greatest threat to the economy of the Indians. White trappers were permitted to exploit the game resources almost at will.

In 1922 there were already 40 white trappers between Fort Smith and Great Slave Lake, and they crowded the Indians from their old districts. In 1923 there were 118 white trappers in the area around Fort Smith and Fort Resolution, 46 in Fort Simpson, and 39 in the Fort Norman area.

The majority of these white trappers were itinerants moving from one place to another and a great number of them were foreigners whose object was to take as much as possible out of the country and to put as little as possible back.

The general attitude of the white trapper was that the Territories was a fur country in process of depletion and they were out after their share; a white trapper was a stripper. He took all he could and left nothing behind. He was only a transient ready to pull stakes and leave as soon as he had made his stake or found that it did not pay him to stay.

Until today the old-timers remember how the white trappers cleaned their country of fur, and some quotes from some of the old-timers

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of the Great Slave Lake area:

"The white trappers spoiled the country. Had too many traps, 600, 500, like that. Us natives, well my brother had 35 traps and that's the most any had, most had 18, 19, 20, like that."

"A white trapper and his two sons trapped 730 minks in one winter in the Fort Resolution area. They had 500 traps together."

Here is another quote:

"Every slough, off the Slave River, had a white trapper. They would come in and just clean out the slough of muskrats. They would leave nothing for seed. They would kill every beaver in every lodge they found. Then they would get the hell out of the country. The Indians were not like that; they weren't getting rich, they were living off the land and they knew that they had to be a little bit careful anyway."

In 1923 the Indians of Fort Resolution, Fort Rae, Yellowknife and Fort McPherson experienced some relief when game preserves were established in their districts. People from all the other villages also asked for game preserves, but never obtained them.

While the Department of Indian Affairs seemed to be sympathetic to the Indians' problems, game and fur were the responsibility of the Territorial administration which was quite pleased to see a multitude of white trappers operating in the district. Most of these non-Indian trappers prospected

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1 for minerals during the summer months; there was hope
2 that more minerals would be found. A multitude of game
3 laws were continually established and changed, which
4 contributed to the ruin of the native economy.

5 Indian agent Bourget visited
6 the villages around Great Slave Lake every year, he
7 could be excused for the pessimism with which he usually
8 concluded his reports as in 1929:

9 "The whole of the treaty at all posts left
10 a spirit of lack of confidence from the Indians
11 and the same motto was repeated to the Department
12 agent, that is that the government had promised
13 to the Indians that they would hunt and trap
14 forever, as long as the sun would shine and many
15 more rhetoric flowers, but that in spite of all
16 that every year there was new regulations and
17 restrictions, so much so that they were always
18 anxious to know what would be the next one.

19 At some posts it made it difficult for us to
20 explain all these points to their satisfaction."

21 That's end of quote.

22 The in-fighting among govern-
23 ment officials compounded the confusion growing out of
24 new boundaries, new jurisdiction, and new laws. Could
25 the Indian comprehend the contradictions between what
26 government said and what it did? Could he understand
27 the conflicting policies of different levels of govern-
28 ment? Where the Federal Government had promised him
29 freedom, the Territorial Administration now enforced
30 laws. Where the Federal Government had sought his

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1 goodwill, the Territorial Government now ignored him.
2 As successive Territorial inspectors made their annual
3 trips down the Mackenzie River, their time was taken up
4 with the business of a few hundred white people who
5 lived in the settlements. The best the Territorial
6 inspectors did for the 4,000 original inhabitants was
7 to count them.

8
9 In the summer of 1928
10 Territorial Inspector Moran visited the Mackenzie
11 District as a one man Commission. He was to investigate
12 and report on conditions as he found them throughout
13 the district,

14 "with the object of relating the requests of
15 residents ... and to furnish certain recommen-
16 dations thought to be in the best interest of the
17 people."

18 120 persons were surveyed between Fort Smith and Aklavik.
19 Russian traders, American fishermen, Canadian trappers,
20 Syrian traders, French-Canadian carpenters, Welsh
21 mechanics were all asked to respond; not one Indian
22 was included.

23 The protection of buffaloes took
24 precedence over the protection of the Indians and of
25 their hunting rights. Wood Buffalo Park was established
26 in 1922, and enlarged to 17,300 square miles in 1926.
27 The government sent more rangers, game wardens and
28 veterinarians to Wood Buffalo Park than there were
29 Indian agents or doctors in the entire Northwest
30 Territories. Ironically, at the time when the buffalo
31 was so well protected from the Indian and Metis hunters,
32 in need of meat, the Territorial agent at Fort Smith

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1 proposed that permits be given to
2 "big game hunters with wealth (who) would
3 possibly pay \$1,000 for the privilege of
4 shooting a buffalo in order to secure a
5 good head."

6 Despite recommendations from
7 every side for a government policy to cope with the
8 conflict between the interests of native people and
9 northern development, the Federal and Territorial
10 Governments continued to fumble. The Territorial
11 administration was geared to the promotion of trans-
12 portation, mining, commerce, the welfare of white
13 residents, and to the development of natural resources
14 independently of the native people. The Federal Govern-
15 ment could not totally ignore the potential source of
16 wealth in the Mackenzie District; neither could it
17 ignore the Indian population. The consequent strain
18 on Ottawa resulted in a federal policy of expediency,
19 thinly disguised as a benefit to the Indian people.
20 The reports filed by officials of both governments
21 gave two views of the north, each with different
22 goals and priorities. The focus sharpened somewhat
23 in 1936 when the Department of Indian Affairs was
24 reduced to the status of branch, and a Department
25 of Mines & Resources was created. The Deputy Minister
26 of this new department, Charles Camsell, was named
27 Commissioner of the Northwest Territories. He had his
28 own idea of government:

29 "We are the ideal type of government ... six
30 men in Ottawa, of whom I am one, govern the

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Northwest Territories. We are kindly autocrats. We do what we think best for the people and we don't have to bother with re-election every four years."

The next section is about
"Health and the 1928 Flu."

A discouraged Dr. Bourget, Indian agent at Fort Resolution, wrote in 1927:

"We seem to be in a period of re-adjustment which will show seriously on the Indians."

Deaths from tuberculosis alone outnumbered births in most places. Many infants died a few months after birth. Most families lost parents and children alike. Periodic outbursts of smallpox, measles and flu took a heavy toll over the years. In 1928 an influenza epidemic struck the Mackenzie District. While all the afflicted whites recovered, the sickness killed 600 Indians, one-sixth of the Indian population. At Goulet's Camp near Yellowknife, 26 Indians died and the seven survivors fled in panic.

In 1934 a doctor could examine the Indians of the Northwest Territories for one month and not find

"a single physically sound individual."

He concluded:

"There are 4,000 Indians in the Northwest Territories, I can see no hope for them. They seem doomed to extinction."

In 1939 it was reported:

"There are 100 Indians on the eastern shore

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1 of Great Bear Lake. They are so sodden with
2 tuberculosis that they can hardly support
3 themselves. Nine out of ten of them will die of
4 tuberculosis unless something is done -- and
5 nothing seems to be possible."

6 The exploitation of
7 resources during this period. While the Indians were
8 dying off, prospectors and miners were more successful
9 than ever. The richest uranium mine in the world began
10 operation at Port Radium in 1932. Gold was discovered
11 in Yellowknife in 1933. The Norman Wells Refinery
12 produced 22,855 barrels of oil in 1938. The Department
13 of Mines carried out a geological survey of an area
14 of 10,000 square miles. 400 prospectors searched for
15 minerals in the Mackenzie District in 1937. Trans-
16 portation companies recorded increasing amount of
17 freight, and airplanes soon rivalled the boats. The
18 fur population was depleted, but the white trappers
19 had turned to mining and prospecting. For the first
20 time the mineral production of the Northwest Territories
21 surpassed the fur production in value. Yet by 1939 not
22 one native person was employed in mining or prospecting.
23 It was a great period for development.

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I will deal now with the 1937
Fort Resolution Boycott. In 1937 the Fort Resolution
Indians decided to boycott the annual treaty day to
protest endless restrictions and regulations over their
way of life. The "Edmonton Journal" capsulated the trouble
in a few words:

"White Canadians pride themselves on having got
along quite peacefully with the Indians. Most of
the credit for that belongs to the forbearance of
the Indians and the tact and firmness of the Mounted
Police; not to the fairness or honesty of the deal
we put over the unsuspecting red men. There isn't
much in our treatment of the Indians that savors
of justice or guarantees welfare and prosperity
to the people we dispossessed. "

The Indians focused attention
on the issue which was of greatest concern to them;
their hunting, trapping and fishing rights. The boycott
of 1937, futile as it seems in retrospect, was not without
serious political, economic and sociological significance.
The government was forced to acquiesce to the immediate
demands of the Indians at Fort Resolution while being
sufficiently shaken to review the abuses to the game
resources which prevailed throughout the Territories.

The consciousness of power albeit
fragile and evanescent, was experienced collectively,
serving to awaken the pride of race which many had believed
to be dead. By 1939, irreparable damage had been done
to the native people. It had been shown that legislation
aggravated rather than alleviated their misery. The

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1 Fort Resolution boycott showed that a future depended
2 on the collective will and determination of the Indian
3 people to find solutions and to bring about change.

4 We come to the conclusion of
5 this presentation Mr. Commissioner.

6 "The story of the white man's invasion of the
7 Canadian Northwest may be named ^{by} future historians as
8 one of the blackest blots on the pages of Canadian
9 history. It is an ugly story, a story of greed, of
10 ruthlessness and broken promises. It is the story of the
11 degradation of our Northwest Indians. Canadians have
12 heard only of the fortunes in furs and the gold and
13 silver and radium ores of this stern country. Occasional-
14 ly they have seen newspaper reports of starvation and
15 suffering among the Indians, but Canadians should know
16 all the facts of our Northwest because, unless they act
17 at once they will some day bear the scorn of all
18 peoples for having blindly allowed a noble race to be
19 destroyed."

20 Mr. Commissioner, these words
21 are not my own. They are just another historical
22 document published in 1938 by Bishop Breynat. By then,
23 he had lived 46 years with the Mackenzie Indians and he
24 had been involved deeply in politics, economy, religion,
25 education and medical services. Besides Conroy, he was
26 the only person who witnessed the signing of ^{both} Treaty 8
27 and Treaty 11. He knew what he was talking about. His
28 words sum up the history of the Northwest Territories and
29 not only until 1938.

30 So far, I have presented

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1 historical facts and documents. I would like to add
2 my own conclusions and interpretations.

3 One, since 1870, the Northwest
4 Territories Dene have continuously expressed their
5 desire to lead their own life in their own way on their
6 own land. This was the fundamental aspect of all
7 treaty negotiations and of all subsequent meetings with
8 Indian agents and government officials.

9 Two, all testimonies indicate
10 that due to the culture and history of the Dene, it was
11 a definite impossibility for them to relinquish their
12 rights to their land. This has been translated into
13 legal terms by Mr. Justice Morrow in 1973:

14 "Notwithstanding the language of the two treaties,
15 there is sufficient doubt that aboriginal title
16 was extinguished."

17 Three, difficulties arose, not
18 because treaties were signed, but because the spirit of
19 friendship which presided at their signing was quickly
20 forgotten. The chiefs were relegated into oblivion as
21 soon as the government considered their usefulness to
22 be over.

23 Mr. Pickersgill, Superintendent
24 General of Indian Affairs concluded in 1956:

25 "It does not seem unjust to admit that the pre-1939
26 Canadian policy regarding Indians consisted of
27 kindly isolating them within a structure of forget-
28 fulness."

29 This policy might even have lasted after 1939.

30 Number four, since 1870, the

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1 Northwest Territories has been viewed by government and
2 business not as a land where Indian people live but
3 primarily as a great storeroom of mineral wealth,
4 as a market for southern products and as a good place
5 for friends of politicians.

6 Number five, many times since
7 1870, the Federal and Territorial Governments were led
8 or pressured into taking some decisions which were help-
9 ful to the Mackenzie Indians. However, in the mountain
10 of documents stored in the Canadian Archives, museums
11 and libraries, I would have liked to find at least one
12 document indicating that the government or business
13 took any decision for the only reason that it would
14 benefit the Dene of the Northwest Territories.

15 Number six. Since 1870,
16 government and business, and I should add also some
17 clergymen and many other non-Indians too, made little
18 effort to understand the Indians' way of life, their
19 culture and their aspirations. Government and business
20 have continuously viewed Indians primarily as people
21 standing in the way of what is called development or
22 what is called progress. Government and business have
23 worked either to remove and to ignore the Indians, or
24 to assimilate them.

25 Number seven. Since 1870 the
26 exploitation of northern resources from beaver, buffalo
27 and timber to gold, oil and gas has always been planned
28 and realized with little or no consideration of whether
29 or not it would benefit the Dene of the Northwest
30 Territories.

Sanders, Fumoleau
In Chief

1 Mr. Commissioner, there is
2 one document which I haven't mentioned yet. It is so
3 old that many people haven't even heard of it, but it
4 could help us solve most of the problems of the north,
5 be they about exploitation, development, justice,
6 education or even pipelines. I would like to quote
7 King George the Third, writing about North America:

8 "It is just and reasonable and essential to our
9 interest and the security of our colonies that the
10 several nations or tribes of Indians with whom
11 we are connected and who live under our protec-
12 tion, should not be molested or disturbed in the
13 possession of such parts of our dominions and
14 territories which, not having been ceded to or
15 purchased by us, are reserved to them or any of
16 them as their hunting grounds."

17 This proclamation is dated
18 October 7, 1763.

19 How much progress was made in
20 honour and justice in the past 213 years?

21 Mr. Commissioner, thank you.

22 THE COMMISSIONER: Thank you
23 Father. Thank you very much.

24 MR. SCOTT: Mr. Commissioner,
25 I wonder if we -- if it might be convenient to adjourn
26 now and ask Father Fumoleau and the other panelists to
27 return at 8 o'clock. Mr. Bell tells me he would like to
28 sit this evening if that doesn't inconvenience anybody
29 else.

30 THE COMMISSIONER: All right.

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1 We'll adjourn and come back at 8 o'clock this evening.

2 MR. SCOTT: Oh, Mr. Commissioner
3 before we go, could I see the participating counsel
4 just for a moment before they leave?

5 THE COMMISSIONER: Yes and
6 before we adjourn, I think Mr. Manuel and Mr. Cardinal
7 will be getting the plane. At least, I understand they
8 will be, so if you are not back this evening or tomorrow
9 morning gentlemen, let me thank you both for coming,
10 and say that we all appreciated the views you expressed;
11 even those who may not have wholly agreed with them,
12 I think feel it was important that they should have
13 been expressed ^{here} by two such prominent spokesmen as
14 yourselves, so thank you again.

15 Well, we'll adjourn till 8
16 o'clock tonight.

17 (PROCEEDINGS ADJOURNED TO 8 P.M.)
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MACKENZIE VALLEY PIPELINE INQUIRY ~~Government~~
Publications

IN THE MATTER OF APPLICATIONS BY EACH OF
(a) CANADIAN ARCTIC GAS PIPELINE LIMITED FOR A
RIGHT-OF-WAY THAT MIGHT BE GRANTED ACROSS
CROWN LANDS WITHIN THE YUKON TERRITORY AND
THE NORTHWEST TERRITORIES, and
(b) FOOTHILLS PIPE LINES LTD. FOR A RIGHT-OF-WAY
THAT MIGHT BE GRANTED ACROSS CROWN LANDS
WITHIN THE NORTHWEST TERRITORIES
FOR THE PURPOSE OF A PROPOSED MACKENZIE VALLEY PIPELINE
and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND
ECONOMIC IMPACT REGIONALLY OF THE CONSTRUCTION,
OPERATION AND SUBSEQUENT ABANDONMENT OF THE ABOVE
PROPOSED PIPELINE

(Before the Honourable Mr. Justice Berger, Commissioner)

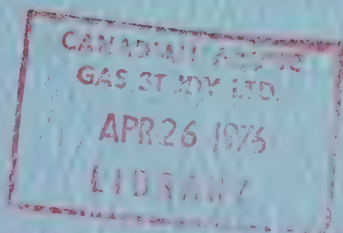
Yellowknife, N.W.T.

April 14, 1976.

PROCEEDINGS AT INQUIRY

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APPEARANCES:

Mr. Ian G. Scott, Q.C.,
Mr. Stephen T. Goudge,
Mr. Alick Ryder and
Mr. Ian Roland for Mackenzie Valley Pipeline
Inquiry;

Mr. Pierre Genest, Q.C.,
Mr. Jack Marshall,
Mr. Darryl Carter and
Mr. J.T. Steeves for Canadian Arctic Gas Pipeline
Limited.

Mr. Reginald Gibbs, Q.C.,
Mr. Alan Hollingworth and
Mr. John W. Lutes for Foothills Pipe Lines Ltd.;

Mr. Russell Anthony,
Prof. Alastair Lucas and
Mr. Garth Evans for Canadian Arctic Resources
Committee;

Mr. Glen W. Bell and
Mr. Gerry Sutton for Northwest Territories
Indian Brotherhood, and
Metis Association of the
Northwest Territories;

Mr. John Bayly and
Miss Leslie Lane for Inuit Tapirisat of Canada,
and The Committee for
Original Peoples Entitle-
ment;

Mr. Ron Veale and
Mr. Allen Lueck for The Council for the Yukon
Indians;

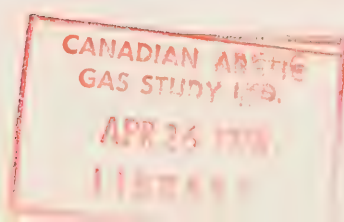
Mr. Carson Templeton for Environment Protection
Board;

Mr. David H. Searle, Q.C. for Northwest Territories
Chamber of Commerce

Mr. Murray Sigler for The Association of Munici-
palities;

Mr. John Ballem, Q.C. for Producer Companies;

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Douglas E. SANDERS

Father Rene FUMOLEAU

Peter H. RUSSELL

- In Chief

- Cross-Examination by Mr. Bayly

- Cross-Examination by Mr. Sigler

- Cross-Examination by Mr. Steeves

- Cross-Examination by Mr. Scott

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(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BELL: Mr. Commissioner,
we're going to exploit Mr. Sanders' good nature again
and ask him to defer to Mr. Peter Russell. Mr. Sanders
will get a special prize when this is all over.

DOUGLAS E. SANDERS &
FATHER RENE FUMOLEAU, resumed:
PETER H. RUSSELL, sworn:

DIRECT EXAMINATION BY MR. BELL (CONTINUED):

Q Mr. Russell has been sworn
and I'd like to take you through your qualifications,
Mr. Russell. You are at present the principal of
Innis College at the University of Toronto, is
that correct?

WITNESS RUSSELL: Yes, it is.

Q And you have a B.A. in
history from the University of Toronto in 1955; and a
B.A. from Oxford in 1957 in philosophy, politics and
economics.

A Correct.

Q In 1957 and 1958 you were
with the Personnel Management Department of the Aluminum
Company of Canada.

A Yes.

Q Since 1958 you have held
various professorial posts in the Department of Political
Economy at the University of Toronto.

A That's right.

Q You were appointed
professor in 1968.

A Yes.

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1 Q In 1967 you were an
2 honorary research associate at Harvard University in the
3 Department of Government.

4 A Yes.

5 Q In 1968 and '69 you were
6 the acting principal of Innis College at the University
7 of Toronto.

8 A Yes.

9 Q From 1969 to 1971 you were
10 at Makerere University in Kampala, Uganda.

11 A Yes.

12 Q And in 1971 you were
13 appointed to your present position.

14 A That's correct.

15 Q You are the recipient or
16 holder of the awards and appointments listed on page 1
17 of the appendix to your testimony.

18 A Yes.

19 Q And I understand, sir,
20 that you are the president of the Wychwood Park
21 Ratepayers Association.

22 A That is true.

23 Q And a member of the Dene
24 Land Claims Southern Support Group.

25 A Yes.

26 Q Will you explain to the
27 Commissioner what that is?

28 A The Southern Support
29 Group of the Dene people is a small group of people who
30 are endeavoring to ensure that the Dene's approach to

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1 a land settlement is understood as thoroughly as
2 possible in Southern Canada and that the Dene are kept
3 well-informed of how the south is receiving development
4 of their claim, and responding to it.

5 Q And you are the author
6 of the publications listed in the appendix to your
7 testimony.

8 A Yes, I am.

9 Q Would you please proceed
10 with your evidence?

11 A Mr. Commissioner, my
12 testimony will focus on two related questions:
13 First question is this: How does the concept of a Dene
14 nation square with the principles of the Canadian
15 Constitution?

16 The second question is this: Should Canada respond to
17 the Dene people's claim for recognition of their rights
18 before or after the construction of a pipeline through
19 their traditional homeland?

20 Let me begin with the first
21 question. To answer it, we must first examine the con-
22 cept of the Dene nation and see what juridical and
23 political arrangements are entailed by that concept.
24 Secondly, we must set our understanding of the Dene
25 nation alongside the letter and the spirit of the
26 Canadian Constitution in order to decide whether or not
27 recognition of the Dene's basic claim to be regarded as
28 a nation within Canada is consistent with the Canadian
29 Constitution.

For an understanding of the

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concept of the Dene nation, I rely primarily on the statement entitled:

"The Dene Declaration,"
issued by the Second General Assembly of the Indian Brotherhood and Metis Association of the Northwest Territories at Fort Simpson, Northwest Territories, on July 19, 1975.

The central concept in this Declaration is that of "nation". We must first come to terms with that concept.

There are two ways in which the word "nation" has been used. The oldest and most continuous usage associates the concept of nation or nationality with what is basically a cultural entity. The American historian, Carlton Hayes, thus defines a nationality as,

"a group of people who speak either the same language or closely related dialects, who cherish common historical traditions, and who constitute or think they constitute a distinct cultural society."

Similarly, the European historian Georg Jellinek, defines "nation" as:

"a multitude of humans characterized by common and unique cultural factors. This multitude shares in a common historical past and is linked by an awareness of its uniqueness."

Nations and nationalities so defined in that way that have existed in human history as social and cultural collectivities long before the emergence of the nation-

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1 state and that other usage of "nation" and "nationality"
2 which is primarily legal and juridical. It is the dis-
3 tinctive mark of the modern political era, beginning
4 about the 16th century, to have organized the world
5 into nation- states, each governed by a sovereign
6 authority based on a distinct territory and claiming a
7 monopoly of legal control over all who inhabit that
8 territory and legal independence from any external
9 authority. In this context, nation is identified
10 with the sovereign state. The nation is the sovereign
11 legal entity which participates as an individual and
12 independent member in the international community of
13 nations and nationality is a legal capacity bestowed
14 by the sovereign nation on all of its citizens, regard-
15 less of their cultural characteristics.

16 Now both usages of the words
17 "nation" and "nationality" survive in the modern world,
18 including contemporary Canada. Canada is clearly a
19 nation in the juridical or legal sense. It is an
20 independent sovereign nation-state. One of the
21 basic aims of the Confederation movement which created
22 Canada was to establish a new nation and a new
23 nationality. But this new nationality was not to
24 entail a cultural uniformity. On the contrary, as
25 George Etienne Cartier stated in the Confederation
26 debates:

27 "Now when we were united together, if union
28 were attained, we would form a political
29 nationality with which neither the national
30 origin nor the religion of any individual

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would interfere."

He went on to elaborate how the different nations (or races, as he called them) in the cultural sense should survive within this new juridical nation:

"In our own Federation we should have Catholic and Protestant, English, French, Irish and Scottish, and each by his efforts and his success would increase the prosperity and glory of the new Confederacy."

Thus both usages of the word "nation" have survived in Canada. The first, connoting an ethnic, cultural or sociological entity has been most used in French Canada. This usage has not been a separatist term. It has been used by those who wish their distinctive national culture to survive within the Canadian nation.

This double usage, as Eugene Forsey pointed out in his presidential address to the Canadian Political Science Association -- I quote from the now Senator Forsey:

"Can theoretically give rise to ambiguities and misunderstandings. But in practice, surely the context makes it tolerably clear which of the two we mean."

Further, insisting on the continuation of the double usage, Forsey asks -- and I quote again:

"Are we really free to choose one meaning of the word 'nation' and 'national' and discard the other? I don't think we have any right to play ducks and drakes with dictionary,

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English or French, in this fashion."

Taking our cue from Senator Forsey, we can now return to the Dene Declaration and see what is meant by "nation" as used in that context. The answer is clear. The concept of nation, the right to be recognized as a national group, as used and claimed by the Dene people, is in accord with the first and oldest usage of these terms. They, the Dene, are claiming the right to survive as a distinct cultural entity, "within the country of Canada".

The Dene's willingness to submit to the legal sovereignty of the Canadian nation-state, while clear enough, is given somewhat grudgingly as a submission to a hard fact of life - to real politik. This is not surprising. Unlike most of us whose forebearers were not natives of this country, but who came to this country by choice, the Dene have had no real choice as to whether or not they should become Canadians and join this nation-state. Their membership in the juridical nation-state is not founded on consent, but on a combination of coercion and trickery. In not the dimmest of senses were they party to any Canadian social contract. In noting this, I am reminded of what the British philosopher, Edmund Burke, said about British rule in India many years ago. Burke wrote as follows, he said:

"There is a sacred veil to be drawn over the beginnings of all governments. Ours in India had an origin like those which time has sanctified by obscurity. Time, in the

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1 origin of most governments has thrown this
2 mysterious veil over them; prudence and
3 discretion make it necessary to throw some-
4 thing of the same drapery over more recent
5 foundations."
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1 It may be prudent for us to
2 ignore the origins of Canadian rule over native people,
3 including the Dene. But the exercise of such prudence
4 does not mean that we should expect they, the native
5 people, to ignore those origins. Nor does it mean that
6 we, non-native Canadians, should deliberately distort
7 their submission to Canadian sovereignty into its
8 opposite simply because it is given grudgingly and is now
9 accompanied with requests, couched in the language they
10 have learned from us, for a maximum degree of self-
11 government within this sovereign nation. To so
12 distort and twist their words and intentions, is a most
13 cynical way to respond to a plea to be treated with more
14 justice by the acknowledged Canadian sovereign.

15 The main end which the Dene seek
16 is their survival as a distinct ethnic entity, a distinct
17 people and in that sense a distinct nation or national
18 group within the Canadian state. The Dene propose two
19 basic instruments for securing this end: first,
20 legis lative recognition, rather than extinguishment, of
21 collective title to their historic homeland. Secondly,
22 a devolution of governmental authority to their communal
23 organizations. The first, that is legislative recognition
24 of ownership, is, as I understand it, essential to their
25 cultural survival. Their land is their life - for it to
26 be parcelled out for sale and exploitation on the
27 commercial market is to alienate them from the
28 essential physical base of their spiritual existence.
29 The need for a devolution of decision-making
30 responsibility to Dene institutions of regional and

1 local government is based primarily on the assumption that
2 the proprietorial rights of a land owner, whether collective
3 as in the Dene's case) or individual, will be worth
4 very little if the land owner is denied a crucial role
5 in making the most significant decisions about how
6 the land is used and developed. The devolution of a wide
7 range of governmental responsibilities to Dene
8 institutions is also desired as a means of preserving
9 and fostering those aspects of Dene culture which are
10 best expressed through the communal institutions of the
11 Dene.

12
13 Now, the precise powers
14 to be delegated to Dene institutions and the relationship
15 of these institutions to the existing territorial local
16 governments, and to any future province which may be
17 established in the region, and to the Parliament of
18 Canada, all these relationships have not been spelled out
19 in detail. Clearly, these are matters which have to be
20 worked out in negotiations between the Dene people and
21 the Federal Government. Without pre-judging the results
22 of such negotiations, we can still ask whether a land
23 settlement along the general line proposed by the Dene
24 is impossible within the Canadian Constitutional system.
25 Those general lines are as I have interpreted them as
26 follows:

27 1. The main aim of any
28 land settlement is the survival of the Dene people as
29 a distinct cultural and social entity (i.e. nation)
30 within Canada.

31 2. The two basic means

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for securing that end are:

a) legislative recognition of the Dene's collective ownership of their historic homeland and

b) devolution of governmental responsibility to Dene communal institutions which will have a decisive voice in determining what happens on the homeland.

Now, there is a whole spectrum of possible arrangements which might be proposed within these general parameters. At one extreme are those which would grant the Dene more power and responsibility than the Federal Government politically, or possibly constitutionally, could consider granting and at the other extreme are such limited concessions to the Dene's claims, that for the Dene to accept them would be to agree to their own extinction as a people. The purpose of negotiating a land settlement of the type proposed by the Dene would be precisely to explore what alternatives exist between these extremes. The question I now turn to is whether ^{any} settlement consistent with the basic requirements of the Dene Declaration is consistent with the Canadian constitution.

Now, our "written" Constitution, the British North America Act and its amendments does not prescribe the arrangements which should be made for Canada's aboriginal people. The British North America Act makes only one direct reference to native people, and that is subsection 24 of Section 91, which gives the Parliament of Canada exclusive legislative authority in all matters relating to -- I quote now from the Constitution -- all matters relating to "Indians

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and lands reserved for the Indians." The Supreme Court of Canada has ruled that the Eskimos of Quebec also fall within this section. Now the Constitution does not stipulate how Parliament should exercise this grant of legislative power over Indians and their lands. There is a clear implication that this Constitutional grant of power to Parliament entails an obligation to protect the interests of Canada's native people. Laskin's text on Canadian Constitutional Law refers to this section of the Constitution as "a specification that Indians as a class should be under federal protection." Indeed, it would have been illogical for the framers of our Constitution to designate Indians as a special class of people under exclusive Federal jurisdiction unless they intended that their interests -- the interests of these people -- should be protected from the legislative policies of the different provinces.

There is another section of the British North America Act which may extend special constitutional protection to the rights and interests of natives living in that part of Canada which was formerly Rupert's Land and the Northwestern Territory. This is Section 146 of the B.N.A. Act which provides that the terms of any Order-In-Council admitting these territories to the Dominion of Canada become part of the Canadian Constitution as if these terms were enacted as was the British North America Act by the Parliament of the United Kingdom. The Addresses of the Canadian Parliament petitioning the Queen to transfer Rupert's Land and the Northwestern Territories to Canada and the

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Schedules to the Order-In-Council effecting the transfer recognize the Indians' ownership of their land in these territories and the obligation of the Canadian Government to compensate the Indians for any of such lands taken for purposes of settlement "in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the Aborigines".

Mr. Justice W. G. Morrow of the Supreme Court of the Northwest Territories has held that and I quote ...

"the assurances made by the Canadian Government to pay compensation and the recognition of Indian claims by virtue of Section 146 of the British North America Act became part of the Canadian Constitution and could not be removed or altered except by Imperial Statute."

For these reasons, he concludes and I quote again from his judgment in *Re Paulette, the Caveat Case*. He concludes

"that the Indians living within that part of Canada covered by the proposed caveat may have a constitutional guarantee that no other Canadian Indians have."

It should be pointed out that while Justice Morrow's decision in this case has been successfully appealed to the Court of Appeal of the Northwest Territories. This part of his judgment was not reviewed by the Court of Appeal. The Court of Appeal's judgment deals solely with the question of whether a caveat can be filed against Crown lands and does not touch upon the constitutional point in Justice Morrow's decision.

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The B.N.A. Act then explicitly bestows legislative jurisdiction over Indians and their lands on the Federal Parliament and implicitly recognizes an obligation on the part of the Federal Government to protect the interests and rights of Indian people. Beyond this it is silent on the precise ways and means whereby the Federal Government is to discharge its responsibilities with regard to native people. Certainly there can be no suggestion that recognition of the basic claims of the Dene Declaration would not be consistent with those sections of our Constitution which bear directly on the treatment of native people.

The other possibility must now be canvassed: namely, that the terms of the Constitution which are concerned not directly or explicitly with indigenous people but the terms of the Constitution which deal with the structure of government generally in Canada might be violated by a land settlement designed to meet the principles of the Dene Declaration. Now, there are two possibilities which must be considered here: first, the recognition of Dene claims within a Federal territory and secondly, the recognition of such a claim in the territory organized as a province.

So far as the structure of Territorial Government is concerned, the Federal Government is not tied by the Constitution to any precise set of governmental arrangements. Indeed, under its constitutional authority to legislate for the peace order and good government of Canada, Parliament has provided a wide range of governmental arrangements over the years,

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1 beginning with the Act of 1869 established in a
2 temporary system of administrative^{control} for Rupert's Land and
3 the Northwest Territory right up to the establishment of
4 the contemporary Territorial Council under the Northwest
5 Territories Act in 1970. It is certainly within the
6 Canadian Parliament's Peace Order and Good Government
7 power, as well as its explicit power over Indians and
8 lands reserved for Indians, to restructure the Territorial
9 Government so as to delegate a measure of self-government
10 to Dene institutions which might be established in the
11 Territory on Dene lands. Federal legislation providing
12 for such a delegation would be just that, federal
13 legislation, and as such not a constitutional guarantee.
14 However, some "manner and form" requirements could be
15 attached to such legislation (for example, the requirement
16 that a two-thirds majority of Parliament be required to
17 amend the legislation) which might provide a measure of
18 "entrenchment".

19 Federal legislation
20 restricting participation in Dene institutions to those
21 of a certain racial heritage might be objected to on the
22 quasi-constitutional grounds that it violates the
23 Canadian Bill of Rights. Such an objection would, I
24 believe, not be well-founded. In the Drybones case, the
25 only occasion on which the discrimination and equality
26 before the law phrases were deemed by the Supreme Court
27 of Canada to override a section of the Indian Act, the Court's
28 ruling specified "that an individual is denied equality
29 before the law if it is made an offence punishable at
30 law, for him to do something which his fellow Canadians

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1 are free to do without having committed any offence or
2 having been made subject to any penalty." Legislation
3 recognizing the Dene's ownership of their land and
4 providing institutions of local self-government could
5 not be construed as inflicting criminal punishment on
6 Dene people for reasons of race. Furthermore, as the
7 Supreme Court's decision in Lavell indicates and as has
8 been cogently argued by Professor Hogg, because Indians
9 are recognized as a special constitutional classification
10 in the British North America Act, such a classification
11 should not be deemed in violation of the "equality before
12 the law" guarantee in The Bill of Rights.

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1 There would appear then to be
2 no constitutional barrier to Parliament's accomodating
3 the Dene claim within a Territorial context. But what
4 about a provincial context? Here the question is
5 whether the Dene's rights to ownership of their land
6 and self-governing institutions could be constitutionally
7 accomodated within a possible future province established
8 in the Territory.

9 There can be no question that
10 under our constitution very specific limitations and
11 conditions can be attached to the powers of newly
12 created provinces. Many precedents may be cited but
13 perhaps the most apt are the retention of the natural
14 resources by the Dominion when the prairie provinces
15 joined the federation and the agreements entered into
16 in 1929, 1930 and confirmed by the British North
17 America Act of 1930 turning over the natural resources
18 to the province, subject to certain lands being set
19 aside for Indian reserves and the protection of Indian
20 hunting and fishing rights. These constitutional
21 agreements clearly gave constitutional protection to
22 Indians in these provinces against provincial legislation,
23 although not it would appear against federal legislation.

24 Constitutionally there is no
25 bar to the Dene's ownership of their land and the right
26 to participate in Dene institutions of local government
27 being guaranteed by the terms under which a new province
28 is established.

29 I would submit therefore that
30 on the basis of the letter of our constitutional law



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1 there is no legal obstacle to recognition of the Dene
2 claim. Nor of course is there any explicit provision
3 for such recognition. The question of whether or not
4 it should be recognized is fundamentally, therefore,
5 one of will and intention not one of law. Again, to
6 quote Edmund Burke when he was debating with his
7 countrymen 200 years ago whether or not under the
8 British constitution, the American colonists could enjoy
9 the benefits of representative government:

10 "The question with me is not whether you have a
11 right to render your people miserable but whether
12 it is not in your interest to make them happy. It
13 is not what a lawyer tells me I may do, but what
14 humanity, reason and justice tell me I ought to
15 do."

16 In deciding a question of this
17 kind, we should look behind the letter of our constitu-
18 tional text and consider the spirit of our constitution,
19 the philosophy of government and the principles of
20 justice on which it is based. If we do this, I think
21 we can see how arrangements designed to ensure the
22 collective survival of the Dene people entail the ex-
23 tention of the original spirit of Confederation for the
24 first time to Canada's native people.

25 Confederation was necessary in
26 1867 because an alternative solution to the governance
27 of French and English Canadians had failed. The
28 alternative solution to Confederation was a program of
29 assimilation; of assimilation of all Canadians into the
30 British culture. Lord Durham's Report in 1839 called

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1 for this solution and the Act of Union in 1840 established
2 a framework of government designed to promote this
3 solution but it did not work. The majority of French-
4 Canadians would not be assimilated.

5 In 1867, it was Cartier's ideal
6 of pluralistic cultural survival within a single juridical
7 nation, not Durham's ideal of a British nation in North
8 America which inspired the establishment of a federal
9 system of government, guaranteeing the rights of certain
10 minorities within the major units of the new federation.
11 Here I refer in particular to Section 93 of the British
12 North America Act.

13 Creating the institutions of
14 this new mode of government and making them work has
15 been a major challenge to Canadian statescraft. With
16 its diffusion of governmental authority and its lack of
17 ethnic homogeneity, the Confederation system has not
18 been an easy one in which to govern but it may well be
19 the most liberal mode of self-government for a large
20 continental nation-state that the world has known.

21 What is called for now by the
22 Dene people is the application to them of the spirit of
23 Confederation and the ingenuity of Canadian statescraft
24 in implementing that liberal spirit. It is possible to
25 respond to this call by saying "We do not know precisely
26 what you want. In any case, we know that it would
27 entail something very different from our established
28 policies and procedures for achieving your assimilation.
29 Therefore we refuse to even talk to you about your objec-
tives or take your claim seriously." It would be possible

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1 to respond that way. It might be possible to respond
2 that way without violating the letter of the Canadian
3 Constitution but I question whether it is possible to
4 make that kind of response without violating the ideals
5 on which the Canadian Constitution is based.

6 I come finally, Mr. Commissioner,
7 to the question of whether a settlement with the Dene,
8 the kind I've outlined, should be made before or after
9 the construction of the Mackenzie Valley gas pipeline.
10 From a purely legal point of view, setting aside any
11 influence which shows social and economic circumstances
12 may have on constitutional possibilities, a settlement
13 can be made at any time, providing there are two
14 parties who wish to negotiate a settlement.

15 But of course, the impact of
16 social circumstances in the real world on the avail-
17 ability of legal alternatives cannot be set aside. One
18 very clear outside limit on the tie in which a settle-
19 ment must be negotiated is that both parties to the
20 settlement must survive the period preceding the settle-
21 ment. From what we know about the advance of our
22 industrial metropolitan culture on North America's
23 aboriginals, the Dene people as a people with a capacity
24 for expressing and developing their own interests, would
25 not long survive the major social and economic upheavals
26 introduced by the pipeline if their right to survive and
27 institutions to achieve that right were not established.

28 Thus, at a certain point, a
29 few years I would judge, after the pipeline construction
30 had commenced, no settlement with the Dene people would

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1 be possible because there would not be a people with
2 which to settle. But this as I have said, indicates
3 only an outside limit on the timing of a settlement.
4 Considerably prior to this is the time at which and
5 the circumstances under which the Dene have a genuine
6 opportunity to enter into negotiations for the kind of
7 settlement they seek. At the center of the Dene claim
8 for a land settlement is the objective of influencing,
9 if not deciding, what happens on their traditional
10 homeland. A project such as the Mackenzie pipeline,
11 one of the largest industrial projects ever undertaken
12 in Canadian history, is about as significant a develop-
13 ment as one can imagine happening on anyone's land.

14 To tell the Dene that they
15 should negotiate land claims after the pipeline has
16 commenced is at least to tell them that they are to have
17 no opportunity to negotiate for the type of settlement
18 they are seeking. After the pipeline, the Dene's
19 negotiating options are likely to be precisely those of
20 the native people in northern Quebec following the
21 initiation of the James Bay hydro-electric project.
22 A decision by the federal government to commence the
23 pipeline before negotiating a land settlement with the
24 Dene probably represents a final decision to preclude
25 any possibility of considering a land settlement along
26 the lines desired for the Dene people.

27 There is another reason why
28 the commencement of the pipeline before any settlement
29 with the Dene people would not only be gravely pre-
30 judicial to the Dene's rights but also would violate

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a fundamental precept of Canadian government, the rule of law.

Canadian law, at least since the Calder case, has recognized the existence of aboriginal rights to lands held and occupied since time immemorial until such rights are extinguished by the sovereign Parliament. In the case of the Dene's aboriginal right to their homeland, there is great doubt as to whether that right has been extinguished. Although a literal reading of Treaties 8 and 11 indicates that the Indians did "cede, release, surrender and yield up" to the Government of Canada "all their rights, titles and privileges whatsoever" to their lands, a great deal of evidence has been amassed, we heard more from Father Fumoleau this afternoon, to support the contention that these treaties were, in effect, fraudulent and that they cannot be taken seriously as an expression of agreement between two parties.

Justice Morrow's finding in the Caveat case that the facts cast sufficient doubt on whether aboriginal title was extinguished by treaty to justify a claim for title by the Indian as caveators was based on such evidence and this aspect of his judgement has not been overruled by the Court of Appeal.

Thus, the question of ownership of the lands over which the pipeline is to be built is not settled in Canadian law. If the Federal Government permitted the pipeline to proceed in these circumstances before working out a land settlement with

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1 the Dene people, it would be determining what is to
2 happen on land whose ownership is in dispute.
3 Constitutionally, Parliament in the end can, if it
4 wishes, authorize the extinguishment of aboriginal
5 rights just as it can pass modern legislation recognizing
6 those rights, but for the Federal Government to proceed
7 as if it had no obligation to deal clearly and explicitly
8 with claims based upon aboriginal rights, would be to
9 ignore the established procedures of the Canadian legal
10 system, as if it, the government - were literally above
11 the law. Federal action of this kind would ignore the
12 basis for the Dene claims established in our system of
13 law, and in the process violate the rule of law, a funda-
14 mental postulate of our constitutional structure.

15 To sum up, the type of land
16 settlement which the Dene people wish to negotiate with
17 the Federal Government, far from violating Canada's
18 Constitution, calls for the extension to them of the
19 fundamental principle underlying Confederation. The
20 working out of the institutional solutions required to
21 accomplish the purpose would be a major challenge to
22 Canadian statescraft. In a sense this task entails the
23 completion of Confederation by applying for the first
24 time the liberal philosophy of ethnic partnership to
25 our native people.

26 There are no a priori constitu-
27 tional reasons for not attempting this task. On the
28 contrary, if the Government understands the ideals upon
29 which our constitutional system is based and wished all
30 of our citizens to participate in those ideals, it is

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imperative that it not refuse to negotiate a land settlement of the kind envisaged in the Dene Declaration.

Further, I have argued that the opportunity to work out this kind of settlement will be thoroughly undermined if the pipeline is allowed to proceed before a settlement with the people through whose historic homeland this pipeline will pass.

Constitutional options are always shaped by historical events and material circumstances. This will be denied by those who have much to gain by precipitating events which would dramatically alter the material circumstances in the Mackenzie Valley, hoping to eliminate certain constitutional and legal alternatives in the process, but such a denial is not credible.

(QUALIFICATIONS & EVIDENCE OF P.H. RUSSELL
MARKED EXHIBIT 568)

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Cross-Exam by Bayly

A settlement whose purpose is to ensure the Dene people the right to determine what goes on on their land would scarcely be a meaningful possibility after a project of the mammoth proportions of the Mackenzie Pipeline has, independently of the Dene, been initiated on their land. There is the additional objection that for the Federal Government to by-pass normal legal processes and permit a pipeline to proceed through land the ownership of which is a matter of serious legal dispute, is to set an example of lawlessness by its own behaviour which would serve as an unfortunate model for those whom it must persuade to use lawful means to secure their ends. Thank you.

THE COMMISSIONER: Thank you, Professor Russell. Section 93 of the B.N.A. Act, is that the guarantees to the French language? French and English.

A With the Protestant and Catholic minorities, denominational and educational rights.

MR. BELL: I should say, sir, that we've filed as exhibits the statements of evidence of Father Fumoleau and Mr. Russell, and the appendices thereto, and a copy of Father Fumoleau's book.

The panel is available for cross-examination.

MR. SCOTT: Well, I think Mr. Bayly is anxious to go first.

CROSS-EXAMINATION BY MR. BAYLY:

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Cross-Exam by Bayly

1 Q Well, Professor Russell,
2 we've heard from people in Alaska that time is required
3 to implement the terms of any land claim settlement,
4 whether it be the setting up of a set of corporations
5 or whether it be the setting up of a new political
6 entity, and it may therefore not be sufficient to
7 simply settle the land claims before commencing the
8 construction of a Mackenzie Valley Pipeline. Do you have
9 any comments as to whether you agree or not to that
10 statement?

11 WITNESS RUSSELL: You mean that
12 there will have to be a period after the initial settle-
13 ment to get the new institutional framework in place
14 and operating with some degree of effectiveness?

15 Q Yes.

16 A Well, I think that would
17 certainly be
18 the ideal because it's not sufficient just to say on
19 paper, "We're going to have certain institutions which
20 are going to have a really effective and influential
21 role on what happens on the land," and go ahead and do
22 things before those institutions are in place. I think
23 ideally you'd need some time.

24 Q It appears then that those
25 institutions would have to be set up and operating so
26 that they could deal with any project, particularly one
27 of this magnitude.

28 A Certainly, both in the
29 governing sense and in the regulatory -- on the
30 regulatory side. I would assume they ^{would} play a very
31 important role in administering the regulations related

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Cross-Exam by Bayly
Cross-Exam by Sigler

1 to developments that occur on the land.

2 Q Have you given any thought
3 to how long that period perhaps might have to be?

4 A No, that would be
5 speculation, but it would take some time.

6 Q And I suppose it would
7 depend partly at least on the kind of settlement that
8 was arrived at.

9 A Yes, and I think in the
10 Dene's case I know they are preparing, working very
11 hard in developing their claim , and on the structural
12 side. I would hope that they have a good head start
13 on that side of the implementation. They are very
14 conscious and I'm sure they will speak to this, the
15 important challenge of implementing -- not just getting
16 their land claim, but implementing it.

17 MR. BAYLY: All right, thank
18 you. That's the only question that I have.

19 MR. SCOTT: Mr. Sigler?

20
21 CROSS-EXAMINATION BY MR. SIGLER:

22 Q Professor, turning first
23 to your comments related to the spirit of Confederation
24 and to our Constitution, I take it your basic premise
25 in that regard is that what the Dene are seeking now
26 is no more than what is recognized in spirit in our
27 Confederation between French and English speaking
28 Canadians.

29 A It's certainly no more
than is granted to the French and English people.

Sanders, Pimbleau, Russell
Cross-Exam by Sigler

1 Q Now, accepting your
2 expertise in this area, would you see the French role
3 in Confederation as being limited to the Province of
4 Quebec, the rights that are guaranteed to French
5 speaking Canadians?

6 A No, clearly not. There
7 are sections of the Constitution, particularly Section
8 133, which grants certain language rights in the
9 federal institutions, for the French speaking people.

10 THE COMMISSIONER: Excuse me,
11 I was thinking of 133, that guarantees linguistics.

12 A That's the linguistic
13 guarantee in Quebec and federal legislative and
14 judicial institutions.

15 Q French and English are
16 guaranteed in the Federal Parliament, federal institutions.

17 A Yes, Federal Courts.

18 Q Yes, and French and
19 English are guaranteed in the institutions of Quebec.

20 A In the Courts and in the
21 Legislature of Quebec.

22 Q And 93 --

23 A Deals with the rights of
24 the minority groups in the founding provinces with regard
25 to education.

26 THE COMMISSIONER: Yes. Sorry.

27 MR. SIGLER: Q So I take it
28 then that under that section that French speaking
29 Canadians have certain rights outside of Quebec, and
30 English speaking Canadians are guaranteed certain

Sanders, Fumoleau, Russell
Cross-Exam by Sigler

rights within Quebec.

A Yes.

THE COMMISSIONER: The Official Languages Act in a sense sought to extend those guarantees of Section 133 to all federal institutions.

A Yes. It went further than Section 133.

Q But that extension of federal guarantees as to the two official languages of Canada was upheld by the Supreme Court of Canada, wasn't it?

A Oh yes, it was challenged by Mayor Jones of Moncton and his challenge was turned down by the Supreme Court of Canada and the Act was ruled constitutional, quite recently.

MR. SIGLER: Q Well, elsewhere in your paper you presented this evidence that/your opinion that Section 91, sub-section (24) of the B.N.A. Act places responsibility for legislative authority exclusively for "Indians" as a federal responsibility.

A On Indian lands.

Q Right.

Under the B.N.A. Act.

A Exclusively.

Q Well, then do you see then that this federal responsibility for Indians on Indian lands applies not only to the Northwest Territories but to all parts of Canada?

A Oh, certainly.

Q And from -- would I be correct in my understanding of the Calder case that

Sanders, Pumoleau, Russell
Cross-Exam by Sigler

1 you've referred to, that aboriginal rights as I think
2 confirmed in that case by the Supreme Court of Canada
3 are not or do not hinge on Section 146 of the B.N.A.
4 Act or on the order-in-council of 1870, but are more
5 general in the sense of applying to British Columbia
6 apart from those special legislative provisions that
7 are in force here.

8 A Well, the case dealt
9 of course with the Nishga people, but the arguments
10 and reasoning of the judges was general about aboriginal
11 rights existing up until such time as they are explicitly
12 extinguished, for all indigenous people.

13 Q Are your comments about
14 treaties questioning the legality of the treaties as
15 documents to see land limited to Treaties 8 and 11, or
16 would they be general comments about all treaties like
17 the Canadian --

18 A I'm not in a position
19 to comment on all treaties. I'd have grave doubts about
20 all the other treaties. I'd be very surprised if they
21 stood up to critical examination.

22 Q I guess what I'm
23 getting at is that you've limited your remarks in
24 reference to the Canadian Constitution to the Dene
25 Declaration and to the Dene people of the Northwest
26 Territories. Now I take it from your affiliation
27 --

THE COMMISSIONER: Excuse me,
did you want to say something?

A Well, for the obvious

Sanders, Fumoleau, Russell
Cross-Exam by Sigler

1 reason that this hearing is about the indigenous people
2 of the Mackenzie District, the Dene people.

3 THE COMMISSIONER: Sorry, Mr.
4 Sigler, Professor Russell just wanted to add something.

5 MR. SIGLER: I'm sorry for
6 interrupting him.

7 A If you want to extend
8 the seminar to a discussion of native rights generally --

9 Q I do in a way and I'll
10 get to that in a minute. I also take it it's correct
11 that from your affiliation -- and I don't mean the
12 president of the Ratepayers' Association, but the other
13 one -- that you personally accept the Dene Declaration
14 as it's been postulated?

15 A I think it's a very, very
16 fine ideal not just for the Dene people, but as I said
17 for Canadians.

18 Q For Canadians, would you
19 see the same rights and the same arguments being appli-
20 cable say -- well, you're from Ontario, say to the
21 Province of Ontario about creating the same types of
22 institutions to resolve the claim that the twofold
23 treatment of it that you've set out in your paper,
24 first a recognition rather than the continuation of
25 the existence and / ^{then} political institutions to make
26 those rights livable.

27 A Certainly.

28 Q Would you see those being
29 applicable say to Ontario?

30 A If the indigenous people

Sanders, Fumoleau, Russell
Cross-Exam by Sigler
Cross-Exam by Steeves

1 there developed that kind of a claim, of if they
2 did, say related it to Treaty 9, I'd certainly be
3 sympathetic to it. Mr. Manuel spoke generally in this
4 morning's session, this afternoon to his general interest
5 in this type of approach; but it's up to the indigenous
6 people to develop their own statements of goals and
7 intentions.

8 Q But your personal
9 support of the goals and intentions isn't necessarily
10 and intentions
11 limited to these goals/as has been expressed for the
12 Northwest Territories.

13 A Certainly not in principle
14 limited to the Dene.

15 MR. SIGLER: No further questions.

16 MR. SCOTT: Mr. Hollingworth?

17 MR. HOLLINGWORTH: No questions.

18 M R. SCOTT: Mr. Steeves?

19 CROSS-EXAMINATION BY MR. STEEVES:

20 Q Mr. Russell, I'm sorry
21 I'm going to shout a bit but I want you to understand it
22 isn't because it's a cross cross-examination. I don't have
23 a microphone. If I can introduce myself, my name is
24 Steeves. I'm counsel for Canadian Arctic Gas Pipelines
25 Limited. I'd like to ask you a few questions, not in any
26 sense of confrontation or quarrelling with anything you
27 say. I'd like to, if I may, get some further exposition
28 on some of the statements that you've made in your
29 evidence, and I'm particularly interested in what
30 you said on page 5 under .2 in the middle of that page.

Sanders, Fumoleau, Russell
Cross-Exam by Steeves

1 First of all as a preliminary
2 can I ask you this: As a member of the Southern Support
3 Group have you been involved in the drafting of the
4 Dene Declaration?
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Sanders, Fumoleau, Russell
Cross-Exam by Steeves

1 A Oh good heavens no. Not at
2 all.

3 Q I take it from your
4 evidence that you think you understand what it means in
5 terms of Canadian constitutional arrangements.

6 A I hope I do.

7 Q O.K. What^{do} you mean when
8 you refer to the "historic homeland" of the Dene people?

9 A The land on which they've
10 lived for many hundreds of years.

11 Q I see. I want you to
12 understand that one of the tasks facing Arctic Gas and
13 Foothills in this Inquiry is to answer the very question
14 that your evidence is addressed to. Given the nature
15 and extent of the claims of, the various claims, of the
16 native people, will a permit before settlement interfere
17 or prejudice those claims? Now, do you mean by that
18 the area, "historic homeland"? Do you mean by that the
19 area encompassed by the Caveat?

20 A Essentially that area.

21 Q Do you mean any area
22 beyond that or in addition to that?

23 A I'm not aware of any area
24 beyond the area governed by the Caveat.

25 Q Are you familiar with the
26 other claims which are being made by other organizations?

27 A Yes.

28 Q In total, does that area
29 encompass the whole of the Yukon and Northwest Territories?

30 A You're speaking now of the

Sanders, Fumoleau, Russell
Cross-Exam by Steeves

1 Yukon and the I.T.C.?

2 Q Yes.

3 A -- claims?

4 Q Yes.

5 A Adding up the Yukon and
6 the --

7 Q In totality, yes.

8 A Governed by the Caveat and
9 I.T.C., does it -- yes I would assume it does.

10 Q O.K. Now, when you refer
11 in the same section to collective ownership, in what
12 sense do you mean ownership? You mean ownership of the
13 fee simple? I took two years of lawyers jargon. Do
14 you understand what I mean?

15 A I understand what you
16 mean by "fee simple". I would say -- I think you can
17 have ownership based on a statute that gives the people
18 a collective ownership of their land.

19 Q But ownership in what
20 sense? In the sense of southern systems of land holding?

21 A No, I think it would be
22 different. Most southern systems of land ownership is
23 lands owned by individual people or corporations and
24 this would be owned by the people collectively.

25 Q But other than the
26 collective ownership you understand it to be something
27 in the nature of the southern idea?

28 A No, as I said, I think
29 it would different from the normal way in which land
30 is owned in the south as I under -- the Dene have a

Sanders, Fumoleau, Russell
Cross-Exam by Steeves
Cross-Exam by Scott

1 different approach to the ownership of land than do
2 southern non-native Canadians.

3 MR. BELL: I should say sir
4 that Mr. Sanders will be dealing with the question of
5 the precise legal nature of aboriginal title in his
6 evidence.

7 MR. STEEVES: I'm sorry, your
8 mike's not working.

9 MR. BELL: The
10 nature or the precise legal nature of aboriginal title
11 will be dealt with by Mr. Sanders in his evidence.

12 MR. STEEVES: I see. You
13 don't have any particular --

14 A I think Mr. Sanders
15 evidence goes right to --

16 Q O.K. You'll bow
17 to whatever he says.

18 A No. Well, we'll hear
19 what he says.

20
21 Q And you're going
22 to stay to hear that?

23 A I'll try to.

24 MR. STEEVES: All right. Thank
25 you. That's all I have Mr. Commissioner, thank you.
26 CROSS-EXAMINATION BY MR. SCOTT:
27 Q Mr. Russell I've
28 been able to dredge two questions out of your paper
29 that I'd like to put to you. Really they are, I think
30 fundamental questions perhaps that have been put against
your propositions by others, quite often in other forums.

Sanders, Fumoleau, Russell
Cross-Exam by Scott

1 The first that is advanced is that even recognizing
2 what one says about the spirit and letter of the
3 Constitution which contemplates the recognition and
4 protection of races, even to political mechanisms,
5 that that's going to lead to some kind of balkanization.
6 How do you deal for example if you can with the proposi-
7 tion that the Ukranians of western Canada, an ethnic
8 and cultural group should be admitted to this circle
9 of races permitted political institutions and power?

10 A Well, I don't see them
11 as one of Canada's founding peoples and, whereas I think
12 the native people are the founding people, Mr. Scott.

13 Q Well, I accept that the --

14 A I might add that the
15 immigrants who came here came by choice to the country,
16 and take it on those terms.

17 Q Well, let me put this to
18 you. Apart from the fact that the Dene in the Northwest
19 Territory are aboriginal, original people, is there
20 any other reason to distinguish them in your mind from
21 let us say the Ukranian communities in western Canada
22 or the large Italian communities in central Ontario?

23 A Yes. Two important
24 differences. One, they do have a homeland that's still
25 intact, to take the Italians, and they can -- it is there.
26 Italy is there. For the Dene people, this is their
27 homeland and if they lose it, there's nothing else.
28 There's no homeland beyond across the seas. The other
29 is that I think the people of European extraction have
30 an opportunity to retain their identity and self-regard,

Sanders, Fumoleau, Russell
Cross-Exam by Scott

1 capacity for self-development within the Canadian
2 society through a fairly high degree of assimilation,
3 I do not think that the native peoples can do that. I
4 think if they are going to retain their dignity and pride
5 from what we've seen in history, they're going to need
6 their own institutions of self-government.

7 Q Well isn't there also a
8 third point of difference that might be referred to,
9 and that is that the Ukranians of western Canada, for
10 example, or the Italian Canadians of central Ontario,
11 live in places that are already constitutional provinces
12 and therefore beyond the power of the Federal Government
13 to make particular arrangements?

14 A Right in their -- that's
15 right. And the B.N.A. Act gives special recognition
16 to the Indians as a special class of people to be
17 protected from provinces.

18 Q Well now, the second
19 question I'd like to ask you arises out of your assertion
20 that the construction of the pipeline should not precede
21 a land claims settlement. The proposition made frequent-
22 ly in this area, is that the people of southern Canada
23 who own homes and farms and so on, confronted by work
24 that is in the interests of the community as a whole,
25 like a school or a highway or something, are obliged to
26 submit to expropriation and settle their claim later.
27 The argument is made by analogy here that the native
28 people of the Northwest Territory are asked to do no
29 more. That is, submit to work in the interests of the
30 country and settle their claim later. What do you say

Sanders, Fumoleau, Russell
Cross-Exam by Scott

about that analogy?

A I don't accept it for reasons I stated in my paper Mr. Scott. I think the analogy is false, because what is at stake for the native people is not just a compensation in return for their land or part of their land but the political right to determine what happens on their land and they want that before this enormously important project happens on their land. They want that political right intact first. I think that's quite different from the normal position of a person threatened with expropriation in the south.

MR. SCOTT: Those are all the questions I have. Thank you Mr. Russell.

THE COMMISSIONER: Mr. Russell, we've had our heads into environmental questions for many months now and we're just -- at least some of us are just now trying to get into the space that you're in. You're really urging upon us the legitimacy of the claim of the Dene in particular and native peoples in Canada generally, to be regarded as a founding people along with the French and the English, and you say that our Constitution confers the legitimacy that in our Constitution only the native people, the English and the French are offered those guarantees and they are offered explicitly. I take it that you say that the native people in a sense are in the same position as the French to whom those guarantees were provided first by the Quebec Act, I suppose and then a century later by the B.N.A. Act. in that the native people like the

Sanders, Fumoleau, Russell.
Cross-Exam by Scott

1 French people were here when a new polity was imposed
2 upon them. In ^{that} sense, you would distinguish their
3 situation. I know you have other reasons for doing so,
4 but in that sense and in that way, would distinguish
5 their situation from the people of Italian descent
6 who live in Toronto, and the people of Ukranian descent
7 who live Manitoba and so on.

Sanders. Fumoleau, Russell
Cross-Exam by Scott

1 A Yes, I would.

2 Q To that point, I have
3 understood you, I take it. All right, what is the
4 program this evening? Are we going to hear from Mr.
5 Sanders this evening?

6 MR. BELL: Well, I think we
7 should defer to Mr. Sanders on that question. If he
8 wishes to proceed --

9 THE COMMISSIONER: We are in
10 your hands and Mr. Sanders. I was just going to say
11 that if we are, I would like to take a 10 minute break
12 and we could stretch our legs. That's all. It is up
13 to you people.

14 MR. BELL: I think we would
15 prefer to proceed, sir.

16 THE COMMISSIONER: Fine.

17 MR. BELL: I am assuming that
18 since there were no questions of Father Fumoleau that --

19 THE COMMISSIONER: No, I think
20 the understanding was that Professor Russell, for being
21 someone from southern Canada, wanted to catch a plane.
22 That's a characteristic of southern Canadians that we
23 have observed, and I take it Father Fumoleau can be here
24 tomorrow.

25 MR. BELL: He can't, sir. I'm
26 afraid he has another obligation.

27 THE COMMISSIONER: Well, let's
28 adjourn for five or ten minutes and counsel can ask
29 Father Fumoleau any questions they may have when we reconvene.

(WITNESS RUSSELL ASIDE)

(PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

Sanders & Fumoleau
Cross-Exam by Scott

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. SCOTT: Mr. Bell, do you wish us to begin with the examination of Father Fumoleau?

MR. BELL: Yes, I think that would be satisfactory.

MR. SCOTT: All right, Mr. Bayly?

MR. BAYLY: I have no questions, sir.

MR. SCOTT: Mr. Sigler?

MR. SIGLER: No questions.

MR. SCOTT: Mr. Hollingworth?

MR. HOLLINGWORTH: No questions.

MR. SCOTT: Mr. Steeves? Have you any questions?

MR. STEEVES: No, I haven't any questions.

MR. SCOTT: I have one, Father Fumoleau.

CROSS-EXAMINATION BY MR. SCOTT(CONTINUED):

Q Like all historians you badly let us down because your book and your paper stop abruptly in 1939. I wonder if you could -- if it would be possible for you to, in the kind of analysis that is made in the text of your paper, and bearing in mind your experience as a priest in the Territories since 1939, comment on what you see as the major strains of the native peoples' development since that time up to the present?

Sanders & Fumoleau
Cross-Exam by Scott

1 What are the good things that have happened and what
2 are the bad things that have happened?

3 THE COMMISSIONER: Start with
4 the good.

5 WITNESS FUMOLEAU: That's certainly
6 a difficult question to answer when I'm not dealing
7 with history or documents any more, but talking about
8 the native people who are alive now. I think they'd
9 be in a much better position to evaluate their own history.
10 The work I did was because there were very few people who had
11 the opportunity to go and dig in the archives. I think
12 that in the next few days probably some of the native
13 people themselves are going to say -- to tell you about
14 their recent history, what has happened in the past
15 few years.

16 The remarks I made at the end
17 of my presentation today, the conclusions that I drew
18 from the documents are just about the same conclusions
19 I would make after having lived in the Northwest Territories
20 for the past 20-odd years. Is that --

21 Q Well, I guess what you're
22 telling me is I should defer to the succeeding witnes-
23 ses that are coming along.

24 A I think they would be
25 in a good position, you know, to explain what happened
26 in the past few years in their ^{own} lives. What I would say
27 is that the same conclusions I had after studying these
28 documents would be about the same conclusions I'd have
29 to make after my own experience, that the people
30 lost control of their life, their economy, of their

Sanders & Fumoleau
Cross-Exam by Scott

1 education, their part of their culture, of their
2 traditions and that it just made the situation worse
3 in the past few years because what happened in 1939
4 was repeated since on a much larger scale, and that the
5 situation has been worse since 1939 until a few years
6 ago when the people themselves started to organize and
7 to voice really what they have to say.

8 MR. SCOTT: Thank you, Father.

9 (WITNESS FUMOLEAU ASIDE)

10 MR. BELL: Sir, I think that
11 now might be an appropriate moment to adjourn so when
12 we start with Mr. Sanders tomorrow, we'll all be fresh.

13 THE COMMISSIONER: I see,
14 you don't want to carry on with Mr. Sanders -- tomorrow
15 instead of tonight?

16 MR. BELL: Yes, I think that
17 would be the best way to proceed, sir.

18 THE COMMISSIONER: All right.

19 WITNESS SANDERS: Unlike other
20 southerners, I'm not catching a plane.

21 THE COMMISSIONER: All right,
22 we'll adjourn till 9:30 then.

23 (PROCEEDINGS ADJOURNED TO APRIL 15, 1976)
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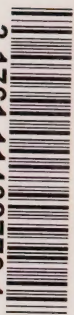
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